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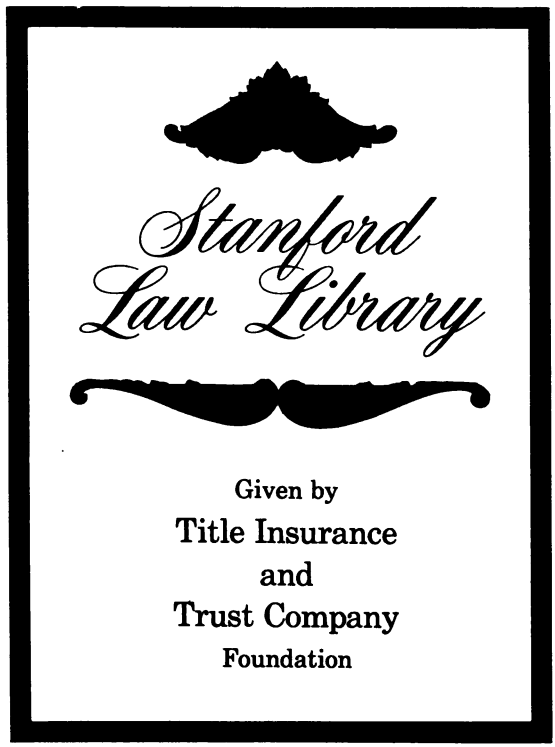
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# LECTURES
# ON SLAVONIC LAW

SIGEL

# LECTURES ON SLAVONIC LAW

BEING THE ILCHESTER LECTURES
FOR THE YEAR 1900

Zigel', Fedor Fedorovich, 1845-1921

BY

FEODOR SIGEL

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# PREFACE

HAVING been honoured by the invitation of the Curators of the Taylor Institution to deliver lectures on some Slavonic subject, I chose the sources of the Slavonic Law, because the whole political, social, and economical life of a society is most clearly reflected in the legal history. But the first step to an independent knowledge of such a history is a survey of the legal documents, their critical editions and scientific investigations. A serious acquaintance with the sources of the Slavonic Law can be only attained by reading them, which is much more accessible to a foreigner than the study of the various Slavonic legal histories, because a great many manuscripts are written in Latin. As the development of the Slavonic nations greatly differs from the development of other European peoples, it seemed to me necessary to add a little sketch of their political and social histories; the history of the sources, I thought, could only be made interesting to some degree on the broad basis of the transformations of the different Slavonic states and societies.

Finally, I have found it useful to indicate the most valuable textbooks on the history of the Slavonic Law and legal antiquities, with some critical remarks for students more advanced or more interested in the study of the Slavonic world. An exhaustive bibliography could certainly not be aimed at, because it would render the whole work too cumbersome.

While composing my lectures, I have been wholly penetrated by the wish to justify the confidence of the Curators, and to promote as much as possible the knowledge of the Slavonic world among the English people, so great and so worthy of praise for the spreading of civilization. I thank most heartily the Curators of the Taylor Institution for the opportunity given to me to speak at Oxford, in one of the oldest and most celebrated universities in the world, and also for their generosity in supplying means for printing my lectures. But especially I express my sincere thanks to Professor W. R. Morfill, who was the first promoter of my invitation and has taken so much interest in revising these pages, which are published at such a distance from their author.

F. SIGEL.

WARSAW, *July* 1, 1901.

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# LECTURE I

## INTRODUCTION

## BULGARIA: SERVIA

THE comparative method occupies a very large place in the investigations of the laws of social development. The information of travellers about the manner of life of savages accumulates more and more; even the soil is broken for discovering the remnants of the written and architectural monuments of Egypt, Assyria, and Babylon. But notwithstanding all this, a remarkable gap in the picture of social transformations must be felt in the West on account of the insufficient knowledge of the Slavonic political and social institutions. Meanwhile a little more information on Slavonic countries is very useful even for a good understanding of Western Europe. The peculiarities of the enormous influence of the Roman Catholic Church during the Middle Ages cannot be well grasped without comparison with states which never acknowledged her power. The importance of the inhabitants of cities in the social evolution can be only conceived, if we have before our eyes a country, like Poland, where the people of the towns, being considered as foreigners for centuries, were for that reason not admitted into the Diet. The feudal institutions, spread over the whole West, had almost no part in the history of the Slavonic lands. Thus the great forces, moving the

Western mediaeval society, can be either only partially (Roman Catholic Church) or not at all observed among the Slavs. The Slavonic society at its outset scarcely differed from that of the other Aryans; its organization was the same as that of the Greeks, the Romans, and the Celts, so vividly described by the late Prof. Freeman in his *Comparative Politics*. The essential difference in the growth of Western and Eastern European Aryans is therefore due to the difference of the various later influences. Their action can be established perfectly well by comparison.

Besides, if we examine only the Slavs themselves, without comparison with other Aryans, we find that this society, at the outset with the same political and social organization, in the course of centuries was subject to very different influences, moral and material. One part, the Slavs living on the shores of the Baltic, remained true to their heathen religion and disappeared; another assumed the occidental political and social ideas, with some modifications in different countries, and evolved states that seemed powerful and flourishing, but fell in the seventeenth and eighteenth centuries; the third portion was permeated by Byzantine influence, and underwent a different fate. Bulgaria and Servia vanished after a short splendour; Russia from the fifteenth century considered herself as a third Rome, and manifests in our times a vigorous life. The material surroundings are also extremely diverse. What a great difference between the plains of the Russian black soil and the arid, rocky Dalmatian shores of the Adriatic! between Bohemia, closed round by mountains, and the open frontiers of old Poland! What a variety of climates, of flora and fauna! As if nature

herself intentionally had placed the same kind of men, with the same primitive ideas for experiment, under the most various influences of ideas, neighbourhood, and geological conditions. We must add to all this, that the Slavonic states, with the exception only of Russia, have brought their evolution to an end. They evoke the interest attaching to things past; we can perceive in one moment the process of social life from the beginning to the end. This remark is not invalidated by a reference to the Slavonic resurrection since the eighteenth century, because the new political formations have nothing in common with the old ones; we can say even more, the old traditions produce, it would seem, a pernicious influence, because they render difficult the adjustment of rescued nations to quite new surroundings.

The first step towards acquaintance with Slavonic organization is the knowledge of the sources of the Slavonic law. That is the reason I chose this subject for my lectures, when I was honoured by the invitation to read at Oxford, in one of the oldest and most celebrated universities of the world, and before a public belonging to a nation that has done so much for the progress of humanity.

The sources of law appear, strictly speaking, in two forms: customary law and statute law. Customary law embraces all rules for human actions which reign not by the force of an organized political power, but only by the convictions of the social units of their necessity. Statute law contains all enactments of diverse political powers that can uphold their will by force. Besides these two sources I find it necessary to draw your attention to one very important factor in the formation of obligatory rules, viz. the juridical and political literature.

This literature is not only a depository of the juridical opinions of the people, but also has an enormous influence on customary law and statute law.

The history of the sources of Slavonic law naturally subdivides itself into several groups, of which we must now give a general description.

Heathen traditions rule the Slavonic social life until the tenth century. According to the testimony of Byzantine, Latin, and Arabic writers, the Slavonic world was separated into tribes, which resembled each other in appearance, manners, and customs[1]. A tribe formed sometimes one independent whole with a prince at its head, sometimes was disunited under several more or less independent princes. The prince had a very small political power; he was limited by a senate and a national assembly, so that he rather executed the will of others than his own.

The existence of laws in this primitive Slavonic society is confirmed by Procopius, a writer of the sixth century, by the annalist of Fulda under the year 849, and by the so-called Nestor. We know from Constantine Porphyrogenitus that the Slavonic word *zakon* was sometimes used in the Greek language with the Slavonic meaning of law, legal custom[2]. We are told these legal customs were almost everywhere the same. This is confirmed by the use of the same Slavonic words for the expression of certain numerous juridical notions, by

[1] All the information on the Slavs is gathered together and discussed in the important volume of Professor Krek, *Einleitung in die slavische Literaturgesch.*, Graz, 1887.

[2] Dr. Herm. Jirecek, *Slovanské právo v Cechách a na Morave* ('The Slavonic Law in Bohemia and Moravia'), Prague, vol. i, 1863, p. 144 and foll.

the uniformity of religious and moral ideas, and by the same level of intellectual development. The original similarity of all the tribes and the identity of language sufficiently explain the faith of the Slavs themselves in their consanguinity, and the opinion of foreigners that they belong to one ethnical unity. But notwithstanding this unity of the Slavs, Constantine's description of several southern Slavonic tribes, the information of Nestor on Russian tribes, and some remarks by Cosmas of Prague, make us suppose many divergences in the oldest Slavonic legal customs[1]. This diversity was produced by the independent political life of every tribe, and by the geographical configuration (mountains, plains, steppes, forests, marshes), which had necessarily a great influence on the manner of life and therefore on the legal customs. The later history of the Slavonic customary law leads us even to suppose a greater variety of legal customs, namely, differences in several communes of the same tribe. They were also produced by the need of correspondence with the environment, and received formal sanction by regulations of self-governing communes[2].

[1] The critical analysis of the testimonies of Constantine on the southern Slavonic tribes can be found in Con. Grot.: *Izvestija Constantina Bagrjanorodnago o Serbah i Horvatah* ('The Informations of Constantine Porphyrogenitus on Serbs and Croats'), Petersburg, 1880, principally pp. 214–8; *Ljetopis po Lavrentievskomu spisku, Izdanie tretie archeograficheskoj commissii* (so called Nestor, third ed. of the Archeographical Commission), Petersb., 1897, pp. 12, 13. We find a collection of all the information on the Slavonic tribes in Bohemia and Moravia and their critical analysis in Dr. Herm. Jirecek's *Slovanské právo v Cechách a na Morave*, vol. i, 1863, pp. 44–62.

[2] We have clear indications of such local statutes in the Polish customary law, written about the middle of the thirteenth

Some remnants of these oldest customs are presumed by Zachariae von Lingenthal and some Russian writers to have been preserved until now in the reformatory legislation of the Isaurian dynasty (*νόμοι γεωργικοί*, Ecloga). 'The rural laws' speak, for instance, of the village community, which was unknown in the Roman law, and therefore probably came into the Balkan peninsula with the Slavs[1]. It is also very probable

century: 'In etlichen gegenoten ein sunderliche *willekoet* ist gesaezt' (§ 4); 'in etlichen gegenoten ist *gewillekoert*.' See Maks Winawer, *Najdawniejsze prawo zwyczajowe Polskie* ('The Oldest Polish Customary Law'), Wars., 1900, pp. 105, 106.

[1] The point of view on the reformatory movement under the Isaurian dynasty is different among the Greek and Russian writers. Prof. Paparrigopoulo, for example, finds the explanation of this great social phenomenon exclusively in the intellectual forces of the Greek mind (M. C. Paparrigopoulo, *Hist. de la civilisation hellénique*, Paris, 1878, pp. 181-240). On the contrary the Russian students presume therein a great influence of the Slavonic population and its customs. They think that essential parts of the Ecloga are taken from the Slavonic customary law, that 'the rural law' is a pure codification of the Slavonic customs, that 'the rights of neighbourhood' (*προτίμησις*) of the Novella of the year 922, and of the later Novellae on the same subject were predetermined to guard the Slavonic community from its destruction. Very important articles of Prof. Vasilievski in the *Journal of the Ministry of the National Education*, part cxcix, 1878, p. 251 and foll., part cc, 1878, p. 95 and foll., part cci, 1879, pp. 161-73, part ccii, 1879, p. 160 and foll., p. 386 and foll., part ccx, p. 98 and foll., p. 355 and foll.; the last four articles under the title: 'Materials for the Inner History of the Byzantine State'; the valuable article of Prof. Uspenski, ibidem, part xxv, 1883, p. 30 and foll., p. 301 and foll. Zachariae von Lingenthal in the third edition of his celebrated history of the Graeco-Roman Law treats the same subject, but expounds principally the juridical rules themselves without searching for their origin (Zachariae von Lingenthal, *Gesch. des griechisch-röm. Rechts*, 3te Auflage, Berlin, 1892, pp. 218-79).

that the present manners and usages, the legal symbols and the proverbs of the common people[1], contain a huge mass of the oldest Slavonic juridical ideas. At least the present southern Slavonic family life led Jiricek to the

Although this question cannot be acknowledged as decided, the Russian professors Vasilievski and Uspenski have brought some valuable corrections into the work of Zachariae, and have proved the important influence of the Slavonic element in the evolution of the Byzantine political and social life.

[1] The literature on these subjects is enormous, principally upon the southern Slavs and the Russians. Although the registration of the customs of the southern Slavs began a long time ago, their collection and investigation were chiefly stimulated and put on a scientific basis by Prof. Bogisic in his works: *Zbornik sadasnjich pravnih obicaja u juznih Slovena* ('A Collection of the Present Juridical Customs among the Southern Slavs'), Zagreb, 1874; and *Pravni obicaji u Slovena* ('Juridical Customs among the Slavs'), Zagreb, 1867. See also Demelic, *Le droit coutumier des Slaves méridionaux*, Paris, 1876; Krauss, *Sitte und Brauch der Südslaven*, Wien, 1885; S. S. Bobcev, *Sbornik na bigarskite juridiceski obicai* ('A Collection of the Bulgarian Juridical Customs'), Plovdiv, 1896, vol. i. includes only the family relations. Finally the Southern Slavonic Academy of Sciences and Arts began with the year 1896 to publish: *Zbornik za narodni zivot i obicaje juznih Slavena* ('Documents on National Life and Usages of the Southern Slavs'), in which we find a great deal of material for the customary law registered and edited with all possible care.

The literature of the Russian customary law is so enormous, that its bibliography with a very short indication about the contents of the cited works already occupies two volumes: E. J. Jakushkin, *Obychnoje pravo* ('The Customary Law'), Jaroslavl, 1875 and 1896. The newest publication of E. J. Jakushkin, *Obychnoje pravo russkih inorodtsev, materialy dla bibliographii obychnaho prava*, Moskva, 1899, contains only the bibliography of the non-Slavonic peoples of Russia. The Russian customary law is applied in the courts of the communal justice, and, therefore, when a commission was appointed for the reformation of these courts, their decisions were collected and published in six volumes under the title: *Trudy commissii po preobrazovaniju volostnyh*

re-establishment of the oldest Slavonic clan organization, and Prof. Bogisic to the restoration of the old Slavonic family and law of inheritance in Ragusa[1].

I am convinced that these old Slavonic customs were very definite. This is confirmed by the great similarity of the oldest Slavonic social organization with the social forms of all Aryan life, a thing only possible by a very long duration of such a Slavonic organization; it is proved by the extreme attachment of the contemporary Slavs to the manners and customs of their ancestors, by

*sudov* ('Labours of the Commission for Reformation of the Communal Courts'), Petersb., 1873, 1874; a separate volume contains the declarations of the different offices and persons upon these courts. These very important materials were scientifically elaborated in the work of Prof. Pahman, *Obychnoje grazhdanskoje pravo v Rossii* ('The Private Customary Law in Russia'), Petersb., 2 vols., 1877–9, which evoked a very detailed critical analysis by Prof. Malyshev, *Otzyv o sochynenii S. V. Pahmana: 'Obychnoje grazhdanskoje pravo v Rossii,'* Petersb., 1879.

Incomparably less of the customary law is preserved among the Roman Catholic Slavs, in Bohemia and Poland, because the individual tendencies of Western culture very early transformed the national life of the people, and the predominance of the aristocratic spirit in the West has very much diminished the interest for the customs and manners of the populace. We only know one work upon the Bohemian customary law: Ant. Rybicka, *Pravidla, prislovi a povedeni vztahujíci se k správe verejne a obecní i k právu obcanskému a trestnímu* ('Social Rules, Proverbs, and Sayings concerning the Public and Social Administration, and Private and Criminal Law'), Prague, 1872. The Polish customary law began to attract the attention of students only during the latter part of the nineteenth century, and is almost exclusively collected and studied in the two ethnographical newspapers, *Wisla* (the Vistula) and *Lud* (the people).

[1] Dr. Herm. Jirecek, *Slovanské právo v Cechách ana Morave*, Prague, vol. i, 1863, pp. 66–74; V. Bogisic, *Rad jugosl. akad.* ('Works of the Southern Slavonic Academy'), vol. v, p. 123 and foll.

the well-known conservatism of the customary law of all nations throughout the world; finally by the perfect accommodation of the religious and moral Slavonic ideas to all conditions of social life.

But this perfect harmony began to decrease from the fourth century after Christ, when the Slavs were induced to enlarge their abode. They occupied up to the seventh century enormous tracts of land in the west, the south, even the north, and therefore came into collision with old, cultivated nations. This change of surroundings could not remain without some modifications in the legal customs; the inhabitants of South-Western Russia, for instance, certainly were obliged to alter their way of life in consequence of the migration into Bulgaria or even into Greece. This cause of changes in customs, however, was very insignificant in comparison with the great modifications which took place after the definitive settlement of the Slavs. The formation of great political units began under the pressure of several nomadic peoples, of the resuscitated Roman Empire and of Byzantium. These units were founded on quite other principles; on the great power of the princes, which was consolidated by the military retinue, maintained by the people. A still greater change ensued in the ninth and tenth centuries after the conversion to Christianity. Thus not only the political, social, and economic relations, but even the religious and moral ideas, were completely transformed about the tenth century. The old legal customs, permeated by heathen conceptions, lost their power over minds, and were kept together only by the force of tradition. This enormous social, economic, and moral revolution was the cause of the want of all

social bonds which characterizes the Slavonic society from the tenth to the thirteenth centuries.

I feel the necessity of informing my esteemed auditory that our knowledge of the Slavonic world before the tenth century is extremely uncertain, so that my idea of the oldest customs and manners is only a hypothesis. But the written monuments become more and more numerous beginning with this century; we enter on a safer road. At all events the tenth century closes the but slightly differentiated Slavonic life as a preliminary period of the Slavonic revolution. New enormous influences began to actuate the described homogeneous Slavonic masses, and divided them into two great groups, the Orthodox states and the Roman Catholic ones.

The different tendencies of the Greek and Latin civilizations divided the whole of Europe from the fourth century into two halves with two centres of political life, Rome and Constantinople. The unity, for a long time artificially upheld, broke asunder when the separation of the churches took place. The holy union of Christianity in the love of Christ fell in pieces, and was replaced by hatred, enmity, and bloodshed. It was at this moment that the Slavs appeared on the historical scene. The Slavs were therefore from the outset obliged to enter into one or the other confederation, and each confederation developed more and more some characteristic traits.

A multitude of well-known circumstances made the power of the Pope unlimited in the West, led to the conflict with the emperors, and produced the weakening of the dignity of the latter. I need also only remind you of the constitution of Western society, by the

clergy, as an exclusive social stratum, by the aristocracy, chivalry, and citizens. The clergy, who took the national education into their hands during the Middle Ages, were inimically disposed towards the State and its power; mediaeval society was sharply separated into classes. Finally, Western Europe was overpeopled, and sought an issue for its populations, industry, and capital.

Quite another aspect was presented by Eastern society. The early appearance of heresies taught the Church the advantage of political power, and the wars of Byzantium, waged against the avowed enemies of the Orthodox Church, demonstrated the necessity of a close union of the State and the Church, and therefore the Church used all her power to unite peoples of different blood. The clergy themselves were closely connected with civil society through their wives and children, and did not form a separate political body; on the contrary, they endeavoured by their own example and by preaching to unify society as much as possible. To excite the lords or the warriors against the emperor, to preach to them, as was sometimes the case in the Roman Catholic countries, that they are called upon to defend the legal order even against the arbitrary will of the emperor, would have seemed to the Byzantine clergy a hateful heresy. So each half of Europe held up before the Slavs very different political and social ideals: the West pointed to a feeble state and a vigorous, well-differentiated society; the East, to a mighty state, wherein society, differentiated only by the different obligations to the State, was absorbed.

Thus the Slavs, who little by little lost their ancient

ideas with their heathen religious and moral conceptions, began to appropriate the mediaeval views on the universe, and endeavoured to transplant the different ideals of West and East into their homes. The education of the Slavonic masses was commenced by the Orthodox and Roman Catholic clergy in quite different directions. Consequently the separation of the Slavs into two halves, hostile one to another, coincides almost with their conversion to Christianity.

After what has been said, it is not difficult to perceive the characteristic traits of each half of the Slavonic world. On the one hand, we shall find monarchical power, little by little, but continually growing, and society absorbed by the State, which was understood as a depository of all possible goods, of heaven and earth. On the other hand, a monarchical power, dwindling more and more, and a society as disintegrated as in the West, namely into clergy, aristocracy, chivalry, citizens, and peasants, each portion with separate manners and customs, forms of life, rights, and obligations. These principal differences were accompanied by some minor ones. The most important among them was the stream of colonization from the West, which was produced by the Western over-population and by the great natural riches with a scarcity of dwellers in the Slavonian East. We find Germans in Bohemia and Moravia from the most ancient times. The emigrants penetrate into Poland from the end of the twelfth century. The foreign colonization was so powerful in these three countries that the inhabitants of the towns spoke German during centuries, and used German municipal laws until the fall of the two kingdoms. But the Western colonization

was arrested where the Orthodox Church, hostilely disposed to the Latin immigrants, predominated. During the struggles against the lords and gentry for power, the Bohemian and Polish kings could not find support in the cities, peopled with foreigners and always more or less alien to the country. The peasants also were deprived of a strong ally, which the cities might have proved had they not been foreign.

Thus a great many circumstances combined to make the monarchical power very feeble and society yet more disjointed in the Roman Catholic Slavonic states than in Western Europe. On the contrary, the power of the monarch grew more and more in Russia, a typical representative of the Orthodox Slavonic states, in consequence of the continued wars of the State against the adherents of other religions. The defence of itself and its faith against the avowed foes of Orthodoxy led Russian society to the necessity of subordinating all its powers to the State; if even a very small part of the people were freed from the burdens of the State, the latter would perish, and with it Orthodoxy[1].

We may add to all differences hitherto mentioned between the Orthodox Slavonic states and the Roman Catholic ones, the Byzantine law on the one hand, and the Roman law on the other. Finally, the ecclesiastical law was also not the same in the two halves of the Slavonic world, because it was in the closest relations

[1] These ideas on the difference between the West and East and its influence upon the Slavonic world were discussed more in detail in my article: 'Sociology applied to Politics, Social Theories, and Russian Conditions,' *Annals of the American Academy of Political and Social Science*, March, 1898 (vol. xi, no. 2).

with the discrepancies between the Orthodox and Roman Catholic Churches.

You will observe that I lay great stress on the educational influences that were working out the evolution of Slavonic social life. The Slavs, whose psychical state about the tenth century we have described as deprived of almost all social bonds, underwent, I believe, a long education in all the spheres of social life, industry, science, and so on. The Slavs much resembled in this point other peoples of the middle and modern ages; they have not gathered knowledge of all kinds independently, as the nations of ancient history. They appeared on the historical scene when a huge mass of diverse conceptions was accumulated; therefore these peoples were obliged to undergo a long training before they could produce something worth speaking of.

I base even the historical division of the Slavonic law into periods on the changes of the social influences. As the new ideas could not be assimilated in a moment, the struggle between the old conceptions and the new ones lasted centuries. Therefore we shall find everywhere the first period as a time of undefined social rules; they are on the point of formation from the conflict of old ideas with new ones, imported from the East or West. This period of formation passes into the second one, when the social life becomes regulated by definite rules. Finally the influences change considerably at the beginning of the third period. Humanism and reformation appear in Western Europe, and both of these intellectual movements speedily penetrate into the Roman Catholic Slavonic states. At the same time we remark in Eastern Europe powerful Western influences, which make Russia more and more resemble

the West. I find only in the newest time the first dawn of completely independent social thought in the Slavonic world. Thus we shall see everywhere in the Slavonic societies a division into three periods with the characteristics just mentioned.

We can now pass on to the particular Slavonic states and will begin with the Orthodox countries, one of them, Bulgaria, being of great importance even in the tenth century. As our time is limited, I shall draw your attention almost exclusively to pure Slavonic law, excluding foreign law, namely German in the Roman Catholic cities, Roman, Byzantine, ecclesiastical law, and so on.

## BULGARIA[1]

The Bulgarian state was founded about 678 by the Bulgars, a Finnish nomadic tribe, which became warriors under Turkish influence. This not numerous tribe conquered the Slavonic princes, who nevertheless retained a degree of independence. So a great, not very cohesive, state was formed, which was somewhat like the European feudal states. The inhabitants of this political union were converted to Christianity about the year 864, which greatly facilitated the mingling of the Slavs and Bulgars. The son of the first Christian prince,

[1] We have a history of Bulgaria written in a masterly way by the profound scholar Const. Jirecek, *Gesch. der Bulgaren*, Wien, 1876. A critical review of the later scientific literature can be found in the *Journal of the Ministry of National Education* in Bulgaria ('Sbornik za narodni umotvorenija, nauka i knizhnina izdava ministerstvoto na narodnoto prosvjeshtenie,' Sophia); there are sometimes published also original inquiries on the history of Bulgaria.

Simeon, particularly distinguished himself by introducing great reforms; he gave his country a more definite political organization, energetically promoted civilization, and, according to my idea, undoubtedly published laws.

Simeon (888–927) was educated in Constantinople by the most eminent teachers. The Byzantine annalists call him 'a half-Greek' on account of his acquirements; it is said of him that the Politics of Aristotle was his favourite reading. Such a powerful mind must have been excited by the Greek idea, that a state is also a person, who, as everybody else, ought to be educated to moral perfection, as much as possible. Besides, the enlightening activity of the Church may also have had some influence over him. Thus he undertook to train his people in Byzantine conceptions. Therefore the translations from Greek into the Slavonic language were made in his very palace under his personal direction. I am convinced that the translations of the Ecloga, so-called 'rural laws,' and the Prochiron must be referred to his reign. The compilations from the Byzantine civil and canonical laws were also probably begun at the time of Simeon. It is said in the annals that the tzar took part in the labours of translation; so manifestly these words must be referred to the compilations and not to pure translations. Indeed the choice of articles and their partial transmutations for accommodation to Slavonic ideas must have been made by some authority. Finally the compilations contain materials of the eighth and ninth centuries and therefore point to the epoch of the great reformation.

Thus a twofold juridical literature arose in Bulgaria in the tenth century, namely pure translations from Greek and compilations from Byzantine and Hebrew

materials. But this literature has not been preserved in Bulgaria, but was lost later in the Turkish time; it was transferred to Russia, and served for centuries as a source of information in Russian ecclesiastical and even civil courts; only a few Bulgarisms hint at its real native country.

I explain the importance of this literature as follows. The judge in those times had no legal rule for the decision of a juridical contest; he must find it himself. If the social relations rapidly and greatly change, as the case was with the Slavs in the eighth and ninth centuries, he could not discover issues either in precedents or in customs. The Byzantine and Hebrew laws were at this moment for him particularly important. The first belonged to an old world-known, highly civilized state, from which Christianity itself was newly brought over; it was not astonishing that he regarded these laws as really coming from Constantine the Great, as established by God Himself for all Christian states. The second (Mosaic legislation) came directly from God in the opinion of mediaeval nations. These ideas ought to be particularly powerful among ecclesiastical judges. The civil courts could sometimes find a basis for their decisions in old customs, but it was quite impossible for the ecclesiastical ones to do so. Therefore these legal works are to be found in Russia almost exclusively in the collections of ecclesiastical law.

Besides, Simeon and the leading men intended probably to implant in the semi-barbarian society new and more just juridical conceptions; for instance, the responsibility of the criminal alone and not of his family, the difference between murder and assassination, the notion of law, and so on. I am convinced that these translations and

compilations had no legal power in Bulgaria; they were designed to give to the judges examples for decision of legal suits, and to place before the more cultivated classes ideals of a better social order. They enter only little by little, I think, on account of their utility for the ecclesiastical judges, in the collections of canonical law, and became in this manner legal rules; but they were at the epoch of Simeon only a certain kind of juridical literature.

One monument belonging to the literature just mentioned for a long time attracted the attention of students; it is the so-called 'instruction for judges' almost exclusively on punishments for crimes, ascribed in some MSS. to Tsar Constantine. We have two editions of this work, a large one, composed of some translated articles of the Ecloga and Prochiron and of the Mosaic legislation, and a short one, which shows considerable modifications of the Greek text (for instance, substitution of Slavonic pecuniary fines for Byzantine mutilations of the members) and a choice of articles particularly adapted to a semi-barbarian, newly Christianized society. These peculiarities lead us to the presumption that we have in the short edition the text of a legislative act of Simeon, whilst the large one gives us a sample of the compilations above named. This hypothesis is sustained by the fact that the Bulgarian prince, after his conversion to Christianity and his rupture with Byzantium, sent to Rome requesting certain explanations of Christian doctrines, and begging on this occasion for laws. Indeed, it is quite natural that the social rules which reflected the heathen views of the universe did not conform with the Christian teaching. We do not know what laws were sent to Bulgaria, but that does

not interest us, because they could not receive legal force on account of the re-establishment of the friendly relations with Byzantium. This need of laws, so keenly felt, was very probably satisfied by Simeon, whose greatness in political and social relations we are acquainted with. Besides, a private collection of legal customs, of which we shall find many in Bohemia, could not arise in a moment, when the customs had had no time to form themselves[1].

Thus the age of Simeon had an extraordinary importance for the whole of the Slavonic orthodox world. Here Greek literature, including also the juridical, was made for the first time accessible to the Slavs; here the literary riches were accumulated, which fostered for centuries the life of Servia, Roumania, Russia. It can be easily understood that these translations and compilations were not very happily executed; meanwhile they satisfied the first want. A century had not passed after Simeon's death when Bulgaria lost her independence as a state. She rose from the dead at the end of the twelfth century, and led for two centuries more a very stormy life; but we have no juridical monuments of this time. After all, as to what is known of Bulgaria, we can only say that the influence of Byzantium was felt here more intensely than in any other Slavonic country.

[1] Romuald de Hubé, *Droit romain et gréco-byzantin chez les peuples slaves*, Paris, 1880, pp. 15–20. The questions concerned with the so-called 'instruction for judges' have made no progress for the last twenty years; it is a duty of the Russian Academy of Sciences, not yet fulfilled, to give a critical edition of the oldest text of this interesting monument with a comparison with the Greek texts of the Greek originals of the laws.

## SERVIA[1]

The different Slavonic tribes lived a long series of centuries in their customary way under independent princes in the north-western part of the Balkan peninsula. The Servian state was founded by Nemanja only towards the end of the twelfth century. It grew speedily enough, but could not unify the tribes and make of them an ethnical whole. This aim could not be attained in Bulgaria on account of the diversity of the population; it was rendered extremely difficult in Servia, because the country was intersected by mountains and underwent diverse influences. The Byzantine turn of mind predominated, but the Hungarian undisciplined spirit with the example of a warlike and unbridled aristocracy and chivalry came from the North, and the love for almost independent city life prevailed on the shores of the Adriatic. We find concerning the religious relations a continuous struggle between Orthodoxy, Roman Catholicism, and the different heresies, among which the Bogumiles were widely spread and considered most pernicious. All this had the result that the power of the monarch in Bulgaria and Servia was only in theory without limits; it was really very feeble, because the posterity of the old tribal princes produced a mighty aristocracy, who governed almost independently their vast territories, and the occupations of the country

[1] We have not such a history of Servia as of Bulgaria. The results of a great many valuable monographs are not yet brought into one work. The Servian Academy of Sciences, which was founded some years ago, with its publications is the natural centre of scientific life. The most eminent writer on Servian history is Stojan Novakovitch.

by conquest with continuous wars created a large military class.

One Servian king, Tsar Doushan, distinguished himself among all others not only by a series of victorious wars, but also by his legislation. He published in 1349, in an assembly of higher and lower clergy and higher and lower nobility, a code, existing until now in many MSS., which differ in the numbers of articles. We can only surmise from the contents of the laws that the tsar wished to raise the religious and moral standard of life of the clergy and the whole people, to stop the spreading of Catholicism and heresies, to relieve and secure the commercial relations, to annul some abuses in administration and law proceedings, to restrict the haughtiness of the nobility, and to improve the condition of the poor. The legislator was, however, not willing or could not touch the principal causes of the dangerous position of the State, the great privileges of the clergy and nobility and the unfortunate condition of the common people; on the contrary, he strengthened the political and social relations, as they had been consolidated during the last two centuries. Therefore I believe that Doushan was incited to his legislative action, not so much by a strong desire to regenerate his realm by legislation, as by the wish to be compared with the great legislators of Byzantium. This inference can be drawn also from the deficiencies of expression: the words of the laws are very indeterminate (for instance *bashtina*, *otrok*); the forming of the legal rules is often very insufficient; almost irreconcilable contradictions can be found between the legal precepts and the real relations.

This deficiency of the code produced discontent

among the common people and evoked an enormous increase of robberies, thefts, assassinations, and violences of all kinds. A whole set of additions and one supplement, promulgated in the council of the reign in 1354, were necessary for restraining these evils. Indeed, it can be taken for granted that the judicial and administrative activity of the tsar gave occasion for forming new laws founded on imperial enactments. These new laws were inserted in the code in convenient places, and this renders a definition of the extent of the code impossible, hinders the discovery of a system, and explains naturally the diverse number of laws in different MSS.

The sources of the code are greatly varied. The laws of previous kings, the enactments of Doushan, the treaties with neighbouring states, the privileges of the Church, nobility, cities, the canonical law, the Byzantine laws, and particularly the common law gave materials for codification. But the legislator did not intend to incorporate all these in his code, making the part not incorporated invalid; the tsar wished only to generalize some things, to strengthen others, to change a little, and also to forbid something.

A system can be discovered, I believe, notwithstanding the later additions only in the code and not in the supplement of 1354; it was formed of two elements, of the local, Slavo-Servian ideas, and of the influences of Byzantine codes and conceptions. The articles can be divided in the following groups if we take the most trustworthy MS. of Prizren: (1) the canonical law, art. 1–36; (2) the civil persons and their social position, art. 37–72; (3) laws on property, art. 73–83; (4) criminal law and law proceedings, art. 84–112; (5) constitutional law, art. 113–36.

This code, I believe, lost its legal force almost immediately after the death of its author. Notwithstanding this, it retained a considerable importance, as a work of a remarkable Servian tzar, as a monument dear to the people of its past grandeur, as a depository of manners and customs, although very insufficiently formulated, and of some religious and moral rules. This, in my idea, and not its continued legal value, as usually supposed, was the real cause of its frequent transcription and of the renewal of its style in the later MSS.[1]

[1] The history of this code could be written only on the basis of the study of its MSS., because we have no trustworthy testimonies of its appearance. The eminent scholar Schafarik laid the foundation to a critical edition in *Památky drevního písemnictví Jihoslavanuv* ('Monuments of the Old Literature of the Southern Slavs'), Prague, 1851, 2nd ed., 1872. St. Novakovitch published in 1870 the MS. of Prizren, but changed the order of the articles. F. Sigel gave in 1872 a new edition of the same important MS., with a preface on the sources, system, the future fate of the code, and the analysis of a part of its private law. But the most detailed description and estimation of all the MSS. of the code and some other important legal monuments belongs to Prof. Th. Florinski, *Pamjatniki zakonodatelnoj dejatelnosti Doushana* ('Monuments of the Legal Activity of Doushan, of the Tsar of the Serbs and Greeks'), Kiev, 1888. F. Sigel was authorized by the Russian Academy of Sciences to give a critical account of this work; he completely acknowledged the philological part of the work, but made objections as to the relation of the code to some monuments of Greek origin (Petersb., April, 1890). A new critical edition with a valuable preface and important explanations of the Serbian text appeared in Belgrad, by St. Novakovitch, *Zaconik Stephana Doushana tsara srpskog* 1349 i 1354 ('The Legal Code of Stephen Doushan, Tsar of the Serbs, 1349 and 1354'), 1898; it is the most necessary help for the study of this interesting monument. Finally, the eminent Prof. Const. Jirecek, of Vienna, gave a very instructive account of the last edition, with a survey of

We pass on now to the productions of the juridical Slavonic activity in the Balkan peninsula. We have said that the Ecloga, rural laws, Prochiron, were probably translated in the age of Simeon. Novella of Constantine Porphyrogenitus of 922, Synopsis Basilicorum, Prochiron Auctum, were perhaps turned wholly or partially into the Slavonic language also in Bulgaria in the tenth century. All these laws were very important for the Slavs, because they contained Byzantine family, inheritance, and criminal law in its most condensed form, and probably also Slavonic customs. The Byzantine influence is evident in these three parts of law in the Slavonic Orthodox world, because these parts stood in the closest relations to the moral and religious ideas, completely changed by the conversion to Christianity.

We have also said that compilations were probably made from all these translations even in the age of Simeon. This sort of literature agreed so much with the wants of the Southern Slavs that we have until now in Russian libraries many such compilations under the names, 'books of law' (*knigi zakonnyja*), 'right measure' (*merilo pravednoje*), 'code of Tsar Justinian,' and so on. Some of these compilations were probably effected under the influence of kings and tsars, were consequently semi-official, and contained therefore accommodations to the local conditions, whilst a private compiler could most certainly give to these modifications no force. All this interesting juridical literature has not been yet sufficiently sifted; some MSS. may be lost, but some are possibly not yet dis-

the whole literature and a great many important elucidations, valuable also for lawyers, in *Archiv für slav. Philologie*, von V. Jagic, Bd. xxii, 1900.

covered; it is also difficult to determine their native country, whether it was Bulgaria, or Servia, or even if we have to do with a pure translation from Greek. It can only be taken for granted that the so-called 'law of Tzar Justinian' in its short edition is a work of the Servian lawyers, made under the direction of the Tsar Doushan. It follows almost always his code in MSS., and shows considerable modifications of the Byzantine laws for their adjustment to the Servian conditions. This law, not being a part of the legislative activity of the tsar, was a useful instruction for the unlearned Servian judges, making them acquainted with the legal inferences from several juridical evidences (inferences from minority, fraud) and legal notions. On the contrary, the large edition of the just mentioned 'law,' which is found in the later MSS. combined with the code of Doushan, seems to be a private work, in which the short edition of the law of Justinian is filled up principally with extracts from the epitomized Syntagma and other sources, partially even unknown to us[1].

[1] Hubé, *Droit romain et gréco-byzantin chez les peuples slaves*, Paris, 1880, pp. 21–7; V. Bogisic, *Pisani zakoni na slovenskom jugu* ('Statute Law in the Slavonic South'), u Zagrebu, 1872, pp. 56–67. The literature above cited on p. 6, n. 1, and p. 23, note. *Knigi zaconnyja* of Prof. Pavlov, Petersb., 1885. All these questions are not yet settled, partially on account of the lack of positive materials.

# LECTURE II

## RUSSIA

THE Russian law[1] possesses some interesting peculiarities for the universal history of law. It is the only Slavonic law which shows a continual development

[1] I shall draw the attention of the reader only to the books which include the whole Russian history of law and to the writers, important for some greater parts of it. Two professors, one of Petersburg, Sergejevitch, another of Kiev, Vladimirski-Budanov, have treated the whole history. Both of them acknowledge the existence of the natural laws which rule social life, but their points of view are different. Prof. Sergejevitch in *Lekcii i izsledovanija po istorii russkago prava* ('Lectures and Studies on the History of the Russian Law), 1889, 1890, seems to take for granted that the social life not only happens by laws, but also that the course of social events is more or less the same everywhere, viz. even that the history of the Russian law repeats partially the history of law in the West; therefore Sergejevitch likes to elucidate the Russian events by a comparison with the German, French, or English legal history. Prof. Vladimirski-Budanov in *Obzor istorii russkago prava* ('A Sketch of the History of the Russian Law'), 1900, on the contrary, supposes the existence of legal ideas proper to the Slavs, and therefore expounds the Russian events by a comparison with the history of the other Slavonic nations. This difference of views proceeds, I think, from a different extent of knowledge. Mr. Sergejevitch is a profound connoisseur of the history of the Western law; on the contrary, Mr. Vladimirski-Budanov has made independent studies in the history of the Polish and Croatian law. And so the two writers often complete one another: the national

during more than a thousand years, and two states were formed on the territory of the Russian tribes principally from the Russian ethnographical elements in the fourteenth century, Moscow and Lithuania. Whilst the first grew under Byzantine influence, the second lived under the dominion of Western ideas. The law of Moscow evolved itself little by little from the old

traits of the Russian law are explained by other Slavonic laws in Budanov's work, and features common to the other laws, and proceeding from universal human nature, are made clear by Sergejevitch. Besides, Prof. Vladimirski-Budanov has published *A Chrestomathy of the History of the Russian Law*, where the most important monuments are printed according to all scientific needs (three volumes, including the juridical monuments from the tenth century to the year 1649, many editions). Prof. Samokvasov, of Moscow, as an archaeologist, is worthy of note, but his lectures, published in 1896, are destined more for students than for the public. Prof. Leontovitch, of Warsaw, has great importance as an investigator of the history of the Lithuanian law, and is now preparing a publication of his whole course of lectures. Prof. Latkin, of Petersburg, principally treats the history of the eighteenth and nineteenth centuries, *Uchebnik istorii russkago prava perioda imperii* ('A Manual of the History of the Russian Law of the Period of the Empire'), 1899. Prof. Zagoskin, of Kazan, after some important studies on the history of the Moscow period, has published a very full bibliography of the history of Russian law (*Naouka istorii russkago prava*, Kazan, 1891), and laid in the year 1899 the foundation to a monumental history of the Russian law in twelve volumes: *Istorija prava russkago naroda* ('The History of the Law of the Russian Nation'), vol. i, Kazan. Finally, the English public has a very good history of Russia, written by Prof. Morfill (*Russia*, by W. R. Morfill, London, 2nd ed., 1891); the author has laid great stress on the evolution of Russian society, and described it with a wonderful understanding of the Russian relations even in points most difficult to conceive for a foreigner. In the following pages I shall not cite the editions of the monuments; they can be very easily found in Budanov's *Chrestomathy*, with a survey of the whole literature and many important elucidations.

Russian elements and became in time the law of the Russian Empire. The Lithuanian law preserved the old Russian character longer, but came from the sixteenth century under the predominant influence of Polish legal ideas, and died out with the Polish state; it has also been much less studied. Thus we have the interesting fact of the same nationality being subject to two different influences.

I shall have the honour to explain to you the sources of Russian law in three periods, the first from the tenth to the fifteenth centuries, the second from the fifteenth to the eighteenth centuries, and the third from the eighteenth century up to the present time.

We have said that the first period of every Slavonic state reveals a struggle between heathen ideas and imported ones. There is a time during which diverse tribes grow together into one nationality. This process of coalescence was extremely troubled in the Balkan peninsula; on the contrary, it was rendered much easier in Russia by the absence of mountains and by one dynasty, which felt itself strong enough to subject all tribes and to exterminate all their princes. We do not encounter a mighty aristocracy; society is levelled. But, on the other hand, the extent of the country and the sparseness of the population, which was lost between forests and swamps, hindered extremely the spread of foreign views. This sufficiently explains the fact that the princes of the dynasty of Rurik were very much like the heathen tribal princes. Indeed, society differentiated very little and took a large part in government, although the annalists—Greeks by learning, not by blood—spoke of the princes as of aristocrats. Thus Russia after an epoch of unification presented a crowd

of independent states from the middle of the eleventh century. Even the invasion of the Mongols did not produce a great change; it showed only to the people the necessity of unity, and began to accustom them to subject themselves to the will of one monarch, namely to the khan of the Mongols.

The long duration of the just-mentioned struggle between the old and new ideas produced, as we know, a great uncertainty of social rules. The autonomy of the individual, that is the right of every man to settle his relations according to his agreements with his fellow men, was the basis of the whole of the social life. Just as a private person regulated his business after negotiations with the person concerned, so a prince determined his activity either alone, or with the consent of his people, when the latter were interested therein. Therefore the political treaties with Byzantium, with the cities of the Hanseatic league, conventions of princes with one another and with the people were the oldest and most frequent monuments of legal rules, whilst the private agreements, which are to our great sorrow almost totally lost, took the same place in private life. Such agreements (*mir, rjad, dokontschanie, celovanie*) stand evidently on the ground of the customary law, but notwithstanding this they formulate it more sharply, and even at times change it. The rules of common law very often gradually grew from treaties; for instance, we find the same settlements and even the same words in the mutual conventions of princes from the eleventh to the sixteenth centuries; so the relations of princes to the communes of Novgorod and Pskov became from conventional regulations—regulations of the common law. This transformation must have been greatly

facilitated by the primitive similarity of their not complex relations.

The Russian prince of the first period had, according to the old customs, an almost independent sphere of activity. He regulated certain administrative affairs, for instance, the quantity of the tribute, the succession to the throne, and decided law suits. He could, in his last character as judge, appoint other judges in his place, could give them indications how to judge and try criminals; finally, he could give some general rules for jurisdiction. Some remnants of this twofold activity remain to this day. The enactments regarding the clergy and the church of St. Vladimir, of Jaroslav, of Vsevolod and Svjatoslav of Novgorod, of Rostislav of Smolensk, beginning with the tenth century till the year 1150, exist even now, although the authenticity of the first two is very doubtful. Many more enactments have come down to us that belong to the civil judgements of the prince. The annals and so-called Russkaya Pravda transmitted to us a considerable number of such decisions. All these germs of the statute law had legal force only during the life of the prince, their author; this explains the frequent petitions for their confirmation made to his successor. The usual name of these diverse enactments was *ustav*; besides, they were called also *urok*, *sudnaja gramota*, *sudebnik*, *ulozhenie*.

Only when it was necessary to change the usual order of life, the prince felt the need to consult his retinue or the oldest among the people, and to ask the consent of the whole population. These relations began to alter in course of time; where the princely authority prevailed, the prince acted more

independently; where the assembly of the people (as in Novgorod and Pskov) became more influential, it took the legislative power into its hands. Besides, the legislative power could in those times never be regarded as a separate power. The customary law was considered as regulating all relations, and the enactments of princes and assemblies contained almost exclusively sharper definitions of the customary law. It could not be otherwise, as the art of reading was little known and the schools of law did not exist.

The uncertainty of the law in the first period provoked great private activity, which gave vent to several juridical works, existing now in a great many MSS. and known under the name of Russkaya Pravda. The last results of scientific investigations on them are the following. We can distinguish three collections: the Pravda of Jaroslav, the Pravda of the sons of Jaroslav, and the enlarged Pravda.

The Pravda of Jaroslav was composed not later than during the life of that prince; not all the enactments of Jaroslav found place therein; they were arranged in systematic, but not chronological order. One article on assassination is followed by eight articles on wounds; mutilations and personal offences by six articles on transgressions against property and by two additional ones.

The Pravda of the sons of Jaroslav was evidently looked upon as a supplement of the just-named Pravda; it is an incomplete collection of their enactments, arranged in chronological order; the laws changed and amended are preserved with later ones amending them.

The enlarged Pravda consists of two parts; one probably of the time of Vladimir Monomakh, and

the other a supplement. The first half is a systematic code of the laws of Jaroslav, his sons, and later enactments; the second contains later additions of the twelfth and perhaps of the thirteenth centuries, which were inserted as complete statutes, for instance on inheritance, on slaves. This enlarged Pravda has a more scientific character; we find in it the enactments of diverse times contracted into one, the homogeneous enactments generalized, the casual form of laws abolished. The contents of the enlarged Pravda were finally fixed not later than in the middle of the thirteenth century, it being included in the so-called Kormchaja (a collection of the ecclesiastical laws), written about 1284.

The main source of Russkaya Pravda is the enactments of the princes; the kernel, round which the whole began to arrange itself, is the laws of Jaroslav. The decisions of legal suits may be looked upon as a separate source, although they are principally founded on the customary law. Finally, even the Byzantine influence can be already felt. The ancient theory that Russkaya Pravda is based on old Scandinavian and German customs is now completely exploded.

Thus the Russkaya Pravda is a series of private collections of princely enactments, customary law as well as parts from Byzantine sources.

Quite another character have two very important legal monuments of the legislative activity of the assembly of the people, namely, the Charters of Pskov and Novgorod (Pskovskaja sudnaja gramota and Novgorodskaja sudnaja gramota), as instructions for judges. The former has been preserved entire until now. It is uncertain when it received its present form, as known to us, because its date is erroneous. It says itself that it was made 'by the

whole community of Pskov on the assembly of the people after the benediction of the priests of all the five councils in 6905 (1397).' As the fifth council of the clergy took place in 1462, the mistake as to the time is quite evident. These contrary testimonies point probably to a difference of time between its component parts; at least we can clearly distinguish three chronological strata (1–76, 77–108, 109 to the end), every one of them beginning with laws on the organization of justice. Thus the period of its origin probably continued during the hundred years commencing 1397. The sources of the Charter of Pskov are indicated in the heading, namely, the charters of two grand-dukes, Alexander and Constantine, and the old legal customs (*poshliny*). The charter contains the law proceedings, criminal law, and private law. It was exclusively extracted from the customs and manners of the time (even in the princely enactments), so that it distinguished itself from the customary law only by its written form and by an oath of adherence by the people. Finally, this charter is interesting also as attempting for the first time to settle the legislative power; after art. 108 the chief chosen magistrate (*posadnik*) of the city has the right to be the first in making a proposal, and the assembly of the people decides upon the fate of his motion.

We have only the beginning of the Charter of Novgorod; it was probably promulgated about the middle of the fifteenth century, 'by all the five parts of the city, by the people of the Lord Great Novgorod assembled in the court of Jaroslav'; it was in 1471 only copied in the name of the Grand-Duke Ivan III after the taking of the city. The remnants contain

the law proceedings and the law of evidence. This charter does not indicate its sources; we can infer from its contents that its foundation is the old customs (*po starine*), which had partially already taken a written form, namely, in the statutes of the people and in the treaties with the princes.

Thus these two charters contain only the customs, which were deposited little by little during hundreds of years; we cannot discover in them any traces of the reforming spirit of the Moscow law. On the contrary, the old republics wished to preserve as long as possible the legal traditions of ancient times. Therein lies the importance of these two monuments; they show us the Slavonic law as yet almost unaltered by foreign influences. So we have during the first period three legal monuments, of which the first refers to the customs of South-Western Russia and the two last to Northern Russia.

If we take a final glance at this period we find therein a great variety of political formations, which were certainly reflected in the diversity of customary law. Indeed, the princely power with some democratic spirit came greatly to prevail in North-Eastern Russia; the aristocracy began to have a great importance in the South-West; finally, the assembly of the people with some aristocratic spirit took in its hand the reins of state in the North-West. Thus the primordial Aryan unity of prince, senate, and assembly of the people began to differentiate according to the different local influences.

### Second Period.

The first signs of modifications appear at the end of the thirteenth and the beginning of the fourteenth

centuries. They were called forth by great changes in the surroundings, which determined their tendency. Formerly the Russian princes had a pre-eminence over the different non-Slavonic tribes; now they were encircled on the east and south by the Mongols, before whom all Europe trembled: formerly feeble, semi-barbarian Lithuanian and Finnish nations lived on the western confines, among whom the Russian culture spread itself rapidly; now began the formation of a powerful state, Lithuania, which looked with contempt upon the feeble Russian principalities; finally, this mighty state subjected itself more and more to Western influences and to the Roman Catholic religion. If we looked into the heart of a Russian of the fourteenth century, we should find almost despair. There was, however, one enormous force which held up the Russian people: that was their faith. They believed with all the power of their hearts that they alone had the true Christian faith, and that the promise of Christ, that Christianity would endure for ever, could not be false. Here lies the real cause of the extremely close union of the State and the Church, which is felt in Russia even at this moment, and constitutes it 'Holy Russia' in the eyes of the Russian people. This is the cause of the complete devotion of the clergy to the chief of the State; this explains also that a nation, eager for liberty and little disciplined, willingly took upon itself the enormous burdens imposed by the State. So the instinct of self-preservation identified itself with the religious sentiment and created a force so vast that before it, as history teaches, retired the wild energy of the Mongols and united Lithuania and Poland.

All these peculiarities of the Moscow state were

intensified by the fall of Byzantium. This fact produced an enormous impression on the whole of Europe, but it was particularly felt in Moscow. This state from this moment not only began to look upon itself as the heir of Byzantium, as the third Rome, which will never fall, but was also presumed to be so by other Orthodox peoples. Evidently this tended to raise the self-esteem of the Moscow state and strengthen its aggressive and defensive forces. This explains why Lithuanian nobles, notwithstanding the great privileges granted them by the Polish kings, at times took the part of the Russians during the wars between the two states, and why the Russian armies always found support among the Orthodox populations not of Slavonic blood during the wars with Turkey.

Such conceptions, so powerfully impressed on the minds of the people, must of necessity transform society. The grand-dukes, as representatives of the state, being indispensable for sustaining faith and self-preservation, became autocratic, the continual wars with Mussulmans and Latins rendering a strong government absolutely necessary. The freedom of the classes to settle their rights and obligations by contract is replaced by the claim of the State, that every member of society must serve the State in the most convenient manner; while some defended it on the fields of battle, others brought to it their manual labour and furnished revenues to the state treasury. At the beginning (in the fifteenth and sixteenth centuries) these classes were almost equal; in the archives we sometimes find requests of the lower nobility (*deti boyarskie, dvorjane*) for permission to remain as peasants in their village, because it is too oppressive for a poor *dvorjanin* to serve in the army.

But this petition is never granted; the State places the different social groups under severe control. Thus in Moscow classes appeared as a consequence of the diversity of the obligations to the State. These diverse social groups are called in Moscow 'chini'; they must agree with each other, and all of them with the tsar, on the question of how the interest of the State may be best promoted. Thus we see that the parliaments in Moscow were a necessary consequence of the political ideal, which inspired all Russian society, from the tzar to his humblest subject. The will of the tsar gave juridical force to the acts of government, but these acts were the results of a most profound knowledge of the real conditions of the State, which could only be obtained from the *chini*. The great difference between these Moscow parliaments and the parliaments of Western Europe was, that in the first the idea of obligations prevails, while in the second the idea of rights soon began to prevail. Therefore powerful social classes alone took part in the Western parliaments, whilst the humblest citizen was called to them in Moscow; he also belonged to a certain group who bore certain burdens of the State, occupying himself specially with a certain kind of labour; therefore good counsel could be expected even from him as to his special interests. Thus the separation of the legislative power began. These enormous changes must evidently show themselves also in the sources of the law.

The second period is very rich in monuments of the activity of grand-dukes and tsars which establish social rules (*ukaznaja dejatelnost*). This activity is produced by a conscious desire of the chief of the State and of the highest class (*bojare*) to found a single great state

without breaking with the old social forms of life. As was said, great modifications, long ago prepared, in the mental tendencies of the masses took place at the end of the thirteenth and the beginning of the fourteenth centuries; the educational activity of the Church accustomed the people to the idea of one great state with one central power; the subjugation by the Mongols tended to raise the conviction that only one strong power could break the humiliating yoke. The necessity of preserving the old order of life was prescribed by the want of culture, which formerly shone from Byzantium and now was arrested by the hordes of the Mongols; there was no source from which new ideals for the structure of a single state could be drawn. The Moscow Government wished in two ways to fulfil this difficult problem—to build something new on an old basis and by old means; namely, by a multitude of separate enactments, given for an uncertain time and for a limited district, and by legal codes which were designed for the whole of the realm.

The enactments are extremely numerous and multiform. The Government used for such charters various names; almost every one contained privileges, and was most probably given on the petition of the people; therefore the great difficulty, even impossibility, of finding firm principles for grouping. Excluding enactments on a single case, we meet so-called *ustavnyja gramoty*, by which the government of a larger or smaller district was carried on; these are adjustments of general legal rules to the local conditions, and usually founded on ducal grants. Their contents change in course of time as the administration changes. *Ustavnyja gramoty* of the fourteenth and fifteenth centuries

are limited to the definition of the power of princely functionaries over the inhabitants; these charters have principally in view the lower classes, they suffering most from local authorities. The most ancient and important ones are the charters given to the communes of Dvina (1397) and Beloozero (1488). So-called *gubnyja gramoty*, a new kind of *ustavnyja gramoty*, began in the thirties of the sixteenth century and continued to the end of the period; the central power decided to organize self-government in the provinces, namely, to leave to the inhabitants the prosecution and punishment of highwaymen. These charters are addressed to all classes of people; they establish the necessary offices and contain much criminal law. Self-government was introduced to a much greater extent by Ivan the Terrible, and this called forth from 1552 a new kind of charters (*ustavnyja zemskija gramoty*). They contain legal rules on the whole of the private and administrative law, which the chosen authorities needed, because self-government included the whole of the administration of the provinces; the most important charters are *Vazhskaja gramota* (1552) and *Dvinskaja gramota* (1556).

It is not difficult to perceive that this activity was a natural continuation of the efforts of former grand-dukes; for instance, the way they settled the position of the Church. As a consequence of the independent political life of some provinces we find therein the same variety of local customs; that was the first attempt at establishing the administration of provinces newly annexed. The Moscow Government, however, very probably even then introduced modifications for the sake of greater administrative unity, thereby much lightening the administration.

This activity must have created on the one hand the need for general principles for administration; it facilitated greatly on the other hand their appearance by the accumulation of multiform experiences. If the administrative questions differed almost in every province, the activity of the Government was the same almost everywhere, namely, the organization of justice and law proceedings, the level of mental development differing nowhere. In this manner the first code (*Sudebnik*) appeared in 1497, in which 'the grand-duke determined how the lords (*bojare* and *okolnitchie*), must judge.' The code was projected by the *djak Gusev* (secretary of the state) and afterwards sanctioned by the grand-duke, his children, and lords. The sources of the code are principally the above-named provincial charters, from which the rules about the central courts are taken, those concerning the provincial courts being copied word for word; the so-called Russkaya Pravda and the Mosaic legislation gave materials for the code only to a very insignificant degree. Tsar Ivan III established also without doubt some legal rules. The author knew also the Charter of Pskov, as is evident from some articles on private law, but the corresponding paragraphs are sometimes greatly altered. As the code contained additional and not material law, the customary law found almost no place therein. The grouping of the articles is as follows: central law-courts with the criminal law (1–36), provincial law-courts of the ducal governors (37–44), mostly private law (46–68). A code with such poor and exclusive contents evidently could not take the place of the customary law. Its insufficiency was the cause of Ivan's son completing his father's code; this latter work is not preserved.

The first tsar, Ivan the Terrible, was penetrated with the Byzantine idea and therefore aimed at great reforms. His idea was to exterminate the high nobility, to raise the lower classes, to give them a large part of self-government, to abolish the ancient freedom of nobles to take leave of their prince and to pass over to other princes, for instance to that of Lithuania. For that reason he convoked in 1548 the first great council of the realm. So these great assemblies began to appear, which took a large part in the future legislative activity of the State and the Church.

Ivan the Terrible in 1550 promulgated with his brothers and lords a Book of Law (*Sudebnik tsarskij*), and in the following year gave it to the council, consisting of clergy, his brothers, princes, and warriors, to be revised and sanctioned. The original of the code ought to be signed by the members of the council and conserved in the treasury of the state. The sources of it are the former codes and the legislative activity from 1497 to 1550. As we do not know the second code, it is quite impossible to separate the results of this activity in the two codes. We can only presume that the laws, which limit the arbitrary power of the nobles and confirm the self-government of the lower classes, belong to Ivan the Terrible. The contents of this code are also very insufficient; it consists generally of articles on organization of courts and on law proceedings; hardly any private law is included therein; notwithstanding this, it is already laid down as necessary that all cases be submitted to the effect of statute law.

The same council of 1551, named 'of the Hundred Chapters,' was occupied with the reforms in the organization of the Church and clergy. The decisions of this

council exist up to the present time under the name, *Book of the Hundred Chapters*, and are very interesting, although they had only transient legal force. They give a vivid picture of all society, ecclesiastical and civil, in Moscow, on account of the close union of the State and Church. The abuses and superstitions appear with great clearness[1].

The last great legislative act of the first tsar was the criminal code, promulgated about 1555. Therein is regulated the activity of the office of investigation, judging and punishment of robbers. This code was completed by the later tsars. This office did not operate during the civil wars after the extinction of the dynasty of Rurik, and only in 1617 a new criminal code (*ustavnaja kniga razboinago prikaza*) was worked out on the basis of the former laws. As this office continued its activity, new enactments were given on various doubtful questions (1624–31), and these were inserted in the code.

The above-mentioned injunction of the code of the first tsar, that all new cases ought to be determined by the tsar with all his lords, caused the insertion of all such decisions, although given sometimes orally, by every office into its copy of the code. In this manner appeared a considerable number of codes in which the inserted part was different. The diversity of the sphere of activity of different offices caused the supplements of offices, particularly important, to grow into great collections of laws. All this regulating activity of the Government, however, could not satisfy all wants; therefore extracts were made from the beginning of the

[1] The enactments of this council were published in Kazan in 1862 by the Ecclesiastical Academy, and in Petersburg in 1863.

seventeenth century from the third edition of the Lithuanian code and were incorporated in the codes of diverse offices. These supplements had a subsidiary force and were practically used. This reception was much facilitated by the close relations between Moscow and Poland in the seventeenth century.

A plan of Tsar Feodor's code was only discovered a year ago. The public has not yet become acquainted with its composition, contents, and sources.

This development of the legislative activity since the year 1550 had many weak points; the laws were often unknown to different offices, therefore the demand on them embarrassed and delayed the exercise of justice. There was even the possibility of laws being lost or destroyed, e. g. the fire of 1626 destroyed all the laws concerning the domains of the crown, which were given to the serving classes for their use. This uncertainty of the legal bases of society produced arbitrariness and vexations on both sides, and called forth revolts in Moscow, Pskov, and Novgorod. Therefore the tsar, lords, and clergy decided in 1648 to bring all the laws into mutual agreement, to add to them new enactments, to unite them into one code, and to summon a council of the realm for their examination and sanction. The plan of a new code was worked out by a commission of five persons, was analysed in detail by the assembly, of which traces remained in the code itself, and in 1649 approved and printed; the name itself, 'Code made in Council' (*sobornoje ulozhenie*), points also to the importance of society taking part in the codification at this time. The sources of this code are as follows: (1) The former codes and the above-named regulations of diverse offices (*ukaznyja knigi*). (2) The Byzantine laws,

the Ecloga, Justinian's novellae, the rules of Basil the Great, and principally the Prochiron. These Byzantine sources were taken from the collections of the canonical law (*kormtchija knigi*). The extracts are, however, not very large, and were not in accordance with other laws proceeding from native sources; some cruelties of the criminal law can be explained by these extracts. (3) A very abundant source is the Lithuanian Statute of 1588. All the constitutional law and some supplements to the criminal law, besides some paragraphs in other chapters, are taken from it. The cruelty of the Lithuanian criminal law is softened. The manner of borrowing varies; some articles are copied word for word; sometimes only the system and the order of the subject discussed are the same; often the case is taken from the statute, but the decision is independent. New articles probably are few and not composed by the commission, but by the deliberative council. The *Ulozhenie* consists of twenty-five chapters, which contain 967 paragraphs. The system arose probably under the influence of the Lithuanian Statute. It seems to be as follows: (1) the constitutional law (chaps. i–ix), (2) organization of justice and the law proceedings with law of contracts (x–xv), (3) property (xvi–xx), (4) criminal law (xxi, xxii), (5) supplementary part (xxiii–xxv). The *Ulozhenie* is essentially a combination of rules already obligatory in Moscow; it is national notwithstanding its partially foreign sources, because it adjusts all the foreign elements to the Moscow standard, and therefore it distinguishes itself from the laws of the latter period. The incorporation of the foreign law was manifestly produced by the necessity for creating new rules and by the impossibility of drawing them from the customary law,

which could not give any point of support on account of the relaxation of society and of the appearance of quite new social relations. The derivations from Byzantium and Lithuania, where the West-European influence was so strong, already point to Moscow being halfway between the East and the West.

The insufficiency of the *Ulozhenie* and the need of changes in the course of time produced a new supplementary legislation, so called new regulating articles (*novoukaznyja statii*). They relate to the criminal law and the law of property. The statute on robberies and assassinations (*novoukaznyja statii o razbojnnyh i ubijstvennyh delah*, 1669) contains a whole criminal code, which substantially was the completion of the *Ulozhenie*; its principal source was the Byzantine legislation; the cruelty of punishments of the *Ulozhenie*, however, was especially softened. A whole series of laws regulates different kinds of law of property.

*Novoukaznyja statii* stood still on the ground of the Moscow law; but *ustavnaja gramota* of 1645 and *novotorgovyi ustav* of 1667 appeared already under reformatory tendencies, produced by the West-European influences. Thus the Moscow period passes little by little into the Russian law of the empire.

I have endeavoured to unveil to you the spirit of Moscow society, to point out to you the necessity of building something new on an old basis and by old means on account of want of new ideals; finally, I described this same activity in its twofold form, by singular enactments and by codes. Now we shall take a glance at the customary law and its relation to the regulating activity of the tsar.

The importance of the customary law remained the

same in the second period, that is, it was looked upon by the grand-dukes and tsars, and by the people, as the principal basis of the whole social structure. Therefrom, however, it cannot be concluded that the legal rules of the customary law were exactly formulated; on the contrary, the grand-dukes, leaning upon their autocratical power, felt their power little limited by the customary law, and endeavoured to create completely new customary rules by their administrative action, in which also they perfectly succeeded. The importance of the customary law was, however, evident, and the princes and tsars did not consider themselves as called upon to establish rules for ever obligatory for everybody; but they aimed at finding points of support for their administrative and legislative action in the customs and manners. If customary rules grew little by little from their singular administrative enactments, they looked upon the latter as upon eternal rules. The highest powers in Moscow also could not prevent the rise of pernicious usages, for instance the necessity of recurring to the pedigrees of families in appointing officers of the crown. We find the first signs of a change in the relations of the customary law to the statute law under the reign of the first tsar. We meet in his code an article that 'in future all cases ought to be judged after this code' (97); the next article added to this says that cases not decided in the code must be determined, not by the customary law, but by the enactments of the legislative power (98). The cause of such enactments is revealed in the *Book of the Hundred Chapters*. The tsar said therein that 'the manners and customs were unstable in ancient times, nobody took care of the traditional rules, therefore affairs

suffered'; but the statute law aims at rules uniform for ever. Although this specially refers to the sphere of the Church, it can also be ascribed to the civil sphere on account of the multitude and importance of the civil elements in the Council of the Hundred Chapters. It is evident that the weak point of the customary law was remarked, and its removal was aimed at. Notwithstanding this, Ivan IV did not think for an instant of setting aside the customary law; on the contrary, he calls the benediction of the ecclesiastical council on 'the improvement of the code after the ancient usages and manners' (*po starine*); all the contents of his code, even his whole legislative, politic, and administrative action, seem to him a realization of the oldest customary law and not at all as an act of his arbitrary will. The weakness of the statute law in comparison with the customary law is explained partly by the incompleteness, uncertainty, and insecurity of the former. A great many relations were left undecided by codes, and what were regulated were often not thought obligatory. For instance, the *Ulozhenie* forbade every complaint of children against their parents, and menaced them with punishment by the knout. Notwithstanding this, the State received complaints of children against their parents for unprofitable change of landed property by parents, and even nullified such contracts. Generally the petitions against a definite law were accepted, collected, and laid before the highest power, which often preserved them and changed the laws according to the wishes of the petitioners by new and contrary enactments. Such unusual phenomena were the consequences of the origin of laws in Moscow. The Government is induced

by petitions of the interested persons to pass a law; as not all interested, however, are of the same opinion, the highest power receives immediately after the promulgation of the law petitions of contrary tenor. The acceptance of such petitions seemed to the Government to be required by justice. The great number of such petitions incites the Government to examine the affair once more, and so a completely contrary result is often attained, which is authorized as a new law. In a word, this instability of the laws was a consequence of the ignorance of the Government how to collect the petitions of all the persons concerned and to settle the relative strength of the parties.

From this comes during the whole Moscow period the conviction of the governing and governed classes, that the power of passing obligatory rules lies with the people; this power appears in manners and customs, and arises from the interests of all concerned. The enactments of the highest power receive only then their full obligatory force if they convince the people, otherwise they can be easily changed. The highest authority was, after the idea of that time, destined by God to judge society and to regulate its relations, but this judging and regulating action could only be worked by decisions, obligatory for a limited time. At the beginning of the period, as in former times, the enactments of the grand-dukes were looked upon as obligatory only during their lives; the new representative of the highest power confirmed them again after the death of his predecessor. Thus the firm basis of social order was still the customary law. In a word, the regulating action of the tsar was considered not as a true legislative power, but rather as *ius edicendi* of the Roman

magistrate. The true statutes must be published by the tsar only after approval by the whole of the people.

The first signs of political literature appear at the time of Ivan IV in the remarkable correspondence of Prince Kurbski with the tsar[1]. The former is a passionate defender of the old Russian life, with its liberty to regulate by contracts even the relations of the serving classes with the State, with its weak princely powers and with its large self-government. We find further signs of this literature in the work of Kotoshikhin, his descriptions of the administration under the Tsar Alexis being interwoven with sarcastic observations[2]. The first dawn of the Slavophile idea appears in the works of Krizhanich, written in Siberia[3]. Finally, the schism in the Russian Church, produced by the revision of the liturgical books, called forth also a great literary movement. But I cannot call your attention to this literature, not only on account of want of time, but also because it is not yet studied from political and social points of view.

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Passing on now to Lithuania, we assist at the formation of a Lithuanian state on the basis of rules much resembling Western feudalism. But the influence of Russian culture, language, and orthodoxy was strongly felt through the thirteenth and fourteenth centuries, and

[1] N. G. Ustrjalov, *Skazanija knjaza Kurbskago*, Petersb., 1868, 3rd ed.

[2] His work is published by the Archaeological Commission under the name *O Rossii v tsarstvovanii Alekseja Michajlovitcha*, Petersb., 1884, 3rd ed.

[3] Two of his works, 'About Business' (*o promysle*) and 'Conversations about Power' (*razgovory o vladatelstvu*), were published by Bezsonov in Moscow in the years 1859 and 1860.

this greatly facilitated the concentration of the weak Russian principalities in the west and south-west round this Lithuanian kernel. This, however, was stopped by the elevation of the Lithuanian grand-duke to the throne of Poland. Poland in Slavonic history was a passionate admirer of Western ideas; her mission, as it seemed to her, was the spreading of these ideas as far as possible. But the clergy, orthodox and heathen, in Lithuania were opposed to all this, and the close union of all social classes did not facilitate the foreign influences. As new Western ideas could not be assimilated by the whole mass of the people, political reason dictated the necessity of propagating Roman Catholicism and disintegrating society in order to make at least one class accessible to Western culture. So the first privilege appeared in 1387, which gave to the noble warriors of the Roman Catholic Church in Lithuania all the rights of Polish chivalry. These rights were by degrees applied to all the nobility, Lithuanian and Russian, Roman Catholic and Orthodox, of several provinces, and were confirmed in 1457 to the whole nobility and chivalry of Lithuania. Finally, the great privilege of 1492 founded the political omnipotence of the aristocracy in Lithuania; this magna charta of the Lithuanian nobility not only confirmed the former liberties of the nobility in the safeguarding of nobles in all matters relating to their persons and their property, it not only confirmed the largest self-government, but also consolidated the preponderance of the aristocracy in all the course of political life. It can be said that the Lithuanian principality became from this year an aristocratic Republic, the grand-duke—a pure president of an aristocratical council—only an executive

organ of its decisions. We need not stop to consider the long series of privileges given to the different classes of the people (*zemskie privilei*) and to distinct provinces (*oblastnye privilei*), because their characteristic is always the same, namely, the ever greater endowment of the nobility with the rights which it had acquired in Poland. Certainly we find in these charters also testimonies of old customs and manners, but this does not form their principal contents. Care for other social classes can be observed only where the Russian influence prevailed. The great difference between Moscow and Lithuania is evident in the charters of the two states; whilst the Moscow charters regulate the relations of all classes, establish the different obligations of classes to the Government and look upon all of them as equal, because, while some defended the State on the field of battle, others brought to it their manual labour, Lithuania cares only for the nobles, and looks upon the other classes only from the point of view of the nobility.

Privileges of towns in the municipal law of German origin follow the endowments to the nobility and single the inhabitants of cities out from the old unity of population in a district. Thus the differentiation of society into the clergy, nobility, citizens, and peasants, little by little, arises under Western influences.

This tendency to dismember society in order to make its component parts more accessible to foreign influences was very soon noticed by the people and led to great conservatism. The people defended eagerly their old manners and customs, because they dreaded to lose with them their nationality and religion. That is the reason why the regulating activity of the grand-dukes,

inasmuch as it did not concern the constitutional and the administrative law, had only established the old customs and manners. These were determined in law-courts by the testimony of old men, who knew from memory the most ancient customary law. Therefore Lithuanian law, except for the above-named tendency to dismember society, is nearer to old Russian law of Russkaya Pravda and the two charters of Pskov and Novgorod than the Moscow law, in which the idea prevailed of building something new. Therefore also the almost independent life of different provinces was preserved much longer. The highest authority in Lithuania aims at instilling new ideas into society in order to make it more like Poland, and society protests against this and wishes with all its power to retain the old way of life; society in Moscow at the same time is too feeble to protest in the face of the united powers of the Church and the State, and little by little transforms its own manners and usages.

This conservatism of the Lithuanian law is evident in manifold legal monuments in the Code of Casimir of 1468, giving an instruction for judges, but principally in the first Lithuanian Statute of 1529 and the second of 1566. These two statutes, if we exclude the rights of the nobility, are a true picture of the customary law of old Russia as it has been evolved in the course of time. Thus they are very near to the so-called Russkaya Pravda, chiefly because they appeared on the same territory. And all who loved the old Slavonic liberty, looked to Lithuania; while, on the contrary, all who were attracted by Orthodoxy and by the brilliant idea of putting a stone in the building of the third Rome, which should never fall, sped to Moscow. At all events

the two statutes are very important monuments of the Russian law, drawn from the pure customary law and from the above-named charters; the customary law gave material for all kinds of law except constitutional, which is taken from the charters. This tendency of the first statute was so perfectly well known to the leading men that they inserted in it an article that an event, which happened under laws preceding the statute, should be judged by this statute. They did not find in this enactment the impossible rule that a code can have legal force before its publication; the logical consequence being that the statute gave a more determined form to the customary law, which has reigned and will continue to do so. Besides all this the Lithuanian Statutes were distinguished from Moscow legislation by a better system, by definition of rules and by less casuistry, because the Roman law and science of law of that time are felt therein. It is a great pity that they are little studied; the attention of students was drawn to them comparatively recently. Polish influence is greater in the second statute, and so the Lithuanian law loses itself in the history of Polish law; meanwhile Western ideas began to prevail in the Moscow law to the end of the seventeenth century. Now we turn to the third period of Russian law[1].

[1] The three statutes of the Lithuanian principality of 1529, 1566, and 1588, are published in *Vremennik obstchestva istorii i drevnostej rossijskih*, 1854, bk. 18 (St. of 1529), bk. 19 (St. of 1588), and 1855, bk. 23 (St. of 1566). A Polish edition with Latin letters appeared in Posen, 1841, Dzialyński, *Zbiór praw litewskich od roku* 1389 *do roku* 1529. A short but very instructive survey of the history of the sources of Lithuanian law was published by Prof. Leontovitch, Warsaw, 1894, *Istochniki russko-litovskago prava*.

### Third Period.

The need of foreign elements, as soldiers, architects, painters, was felt in Moscow from the middle of the sixteenth century. Certainly Western ideas came with these immigrants; close relations with Lithuania, the invasion of the Poles, the wars with Poland, ending with the incorporation of large tracts of land from Poland, tended more and more to enforce Western ideas which were to be ingrafted on the Moscow stock. We have described the Moscow society, as pervaded by a vivid consciousness of the necessity for a mighty state with a strong monarchical authority, as very religious, as extremely illiterate, as possessing equal rights because equally serving the State by its labour, as warriors, or labourers given to warriors in order to maintain them, as traders, paying to the State treasury and selling also the goods of the Crown. Quite other views began now to operate on such a society. In the West feudal society fell to pieces in the seventeenth century and the idea appeared that a mighty king is necessary, as a representative of the cultivated classes of society, fit to rule the people according to the mandates of reason (*absolutisme éclairé*). Convictions considerably different came from Poland and Lithuania; there it was said that the ruling by the cultivated class almost alone is much better than a powerful king who can abuse his power. Polish society, however, was also fully persuaded that light can shine only from the cultivated class, which must be rich and independent enough to preserve and develop knowledge, sciences, good customs. And now we shall see in Russia a curious struggle between the spirit of equality, worked out by a long series of

centuries and spread among the masses of the people and the wishes of the minorities, sometimes even upheld by the Government, to persuade the people that only the nobility is destined for independent life; that only the nobility, and not the whole of the people, is the support of the throne. These Western ideas of the seventeenth and eighteenth centuries began to prevail in Russia and made possible the enormous influence of foreign law; and up to the middle of the nineteenth century the Government turned its attention almost exclusively to the nobility, evolved from the higher serving classes of the Moscow period. The great reforms of Alexander II, and principally the emancipation of the serfs, certainly drew out the whole mass of the people, but we find in the last twenty years again a return to the nobility. This is also due to foreign influence. We see in all Europe and even in America an apprehension of the powerful spread of the democratic spirit; the wealthy classes are afraid that the masses would not have intelligence, time, and knowledge enough to take care of themselves, that their emancipation comes too early, some even think it altogether impossible; and this state of opinion is evident in Russia in recent years.

These great changes in the ideas of leading men must tend to a change in the legislative power. The participation of society becomes weaker and weaker. Plans of new laws are made by commissions of bureaucrats and are transformed into laws by the Emperor's signature; therefore they are sometimes almost the will of the Emperor, and for that reason uncertain, multiform, and contradictory. This state of the law could certainly not strengthen the sense of justice and consideration for the law. An improvement begins with the nine-

teenth century, when the council of the State is established for examining the proposals of new laws. Finally the necessity is more and more felt to hear the wishes and opinions of specialists and of the people concerned. Almost every great change in the legal order from the time of Alexander II is made after hearing deputies of the persons concerned, but always nominated by the Government itself, and never by vote.

We can very well understand this ignoring of society in the eighteenth century. Not only the mass of the people, but even the clergy was averse to the above-mentioned transformations, and all dissenters were the avowed foes of Western influence. The reforms found support only in some circles of the nobility. Only in the second half of the eighteenth century was this last class entirely permeated by the new spirit after it was freed from obligatory service under Peter III (1762) and received great privileges with some self-government from Catherine II in 1785. Besides, the scientific conceptions of the natural school of law, omnipotent in the eighteenth century through the whole of Europe, excited the craving for radical reforms. This school upheld the statute as the only source of law, and the statute ought to express the will of the legislator, who must draw the substance of the law from the nature of relations in accordance with reason.

Turning now to the sources themselves, we find a very good sample of this tendency in Peter's military code of 1716 (*voinskij ustav*). It contains the organization of the army, the military criminal law, and law proceedings; the last two parts were applied also to civil persons and regulated the criminal practice during almost the whole of the eighteenth century. The first

two parts of the code are translations word for word of Gustavus Adolphus' military laws of 1621–32, of the edition of 1683, of some laws of the Emperor Leopold I, of King Christian of Danemark and of French ordinances and regulations; the sources of the third part are unknown. This code was even published in Russian and German. This transplantation of Western laws, mostly Swedish and German, sometimes even word for word, continued until the middle of the eighteenth century. The influence is great enough even afterwards, but the national peculiarities are considered and the laws are never translated after the time of Elizabeth and especially of Catherine II; the samples of laws are taken mostly from France, but some from England and Germany. Finally, the wish to express in statute law national principles after the time of Nicholas I is evident, but this could only be attained after the emancipation of the serfs and the greater economical independence and mental culture of the masses.

The enormous multitude of laws, often contradictory, made it most desirable to establish all social life on firm basis. So commissions were appointed for making one general code, which continued to sit almost without intermission from 1700–1832, and by which the opinions of leading circles were expressed with great clearness. From 1700–19 Peter I wished to found the code upon a historical foundation and principally upon the *Ulozhenie*, and the commission worked with this object; he decided in the year 1719 to translate foreign laws, principally Swedish ones, word for word, and Catherine I added to this commission two persons from the clergy, as well as members from the civil, military,

and merchant classes. This participation of society was augmented in 1728, when five persons (afterwards only two) were sent to Moscow from the nobility of every province. Special commissions were appointed for the codifications of the laws of Livonia and Little Russia in the same year. Not all these legislative attempts were successful; only the commissions under Elizabeth[1], Peter III, and Catherine II worked out proposals for the law proceedings and criminal code; the latter seemed to be important, but was not sanctioned, and is only lately published.

The most important commission was, however, under Catherine II in 1767–8; it was composed almost exclusively of members of society, of deputies elected by the nobility, town inhabitants, cossacks, peasants, dissenters, and of the delegates of some offices of the State, the total number amounting to 564 members. It received from the Empress the celebrated instruction, which had no legal force, but which is often quoted in later laws. This instruction consists of twenty-two chapters with 655 articles, and is drawn partially from Montesquieu's *Esprit des lois* and Beccaria; it has a scientific character and is permeated by humanitarian principles. Such a numerous commission could evidently not compose a project, but only examine a proposal already written. Notwithstanding this failure, the wishes expressed by different classes of the nation had a great influence on the organization

[1] The plans of the criminal code of 1755 and of 1766 were published in Petersburg in 1882, *Projekty ugolovnago Ulozhenia* 1754–66. The plan of the third part (private law) of the new code was published in Petersb., 1893, by Prof. Latkin, *Projekt novago Ulozhenia.*

of society and administration of very important laws of Catherine II [1].

We see in the commissions under Alexander I for the first time an open struggle between the reforming faction, at the head of which stood Speranski, who worked out in 1809 a proposal for a code of private laws after the Code Napoleon, and the national conservative faction, which wished only a clear formulation of rules already existing. As the commissions under Alexander I had also done nothing, Nicholas I, in 1826, transferred the whole work to Speranski, who had come to power again. The latter tended now more to the national faction, and therefore published firstly a collection of all the laws from the *Ulozhenie* up to the day of the ascension to the throne of Nicholas I, in chronological order, under the title, *A Complete Collection of Laws*, in 1830. This collection ought not to have ended with this edition of the code, but to have been continued; it does not answer to its title, because it contains much which is not law, while many real laws are wanting.

Speranski, relying upon this enormous material, chose legal rules which, not being abolished, are still obligatory, and brought them all into systematical order. Later search shows, however, that he had taken much from the code of Napoleon in his codification of

[1] Prof. Lappo-Danilevski has published, in the *Journal of the Ministry of National Education* in 1895, an article 'Upon the Collection and Code of Laws of the Russian Empire' made under Catherine II. The classical work upon all the legal commissions of the eighteenth century is written by Prof. Latkin, *Zakonodatelnyja kommissii v Rossii v XVIII st.*, Petersb., 1887.

the private laws[1]. His system was founded on the idea that two unions exist in every state, a State union and a civil union. Both of these unions call for laws of two kinds, laws which determine the essence of the State union or of the civil union, and laws which only guard the unions already constituted. Thus this *Code of Laws of the Russian Empire*, containing with few exceptions all the laws of Russia in fifteen volumes, was edited in 1832. After this first edition followed two complete ones in 1842 and 1857; besides which a great number of new editions of different volumes and even different statutes exist.

The great reforms of Alexander II produced considerable legislative activity. The emancipation of the serfs and the necessity to determine their future position gave the first impulse to reforms, which embraced the administration of justice, organization of self-government in provinces, cities, and universities. His successors satisfied themselves with some modifications of the bases laid by Alexander II; in course of time, however, two commissions were appointed, one for the code of criminal law and the other for the code of private law.

It is quite evident that the relation of the Government to the customary law must change in the third period. Indeed, the tsar declares, in two laws upon economical relations, as early as the second half of the seventeenth century, that he will abolish the abuses which have penetrated into the usages, and that he will reform the commercial law after the examples of the neighbouring states. The Government entered

[1] M. Vinaver, 'Upon the Sources of the tenth volume of the Code of Laws,' *Journal of the Ministry of Justice*, 1897, bk. vi.

finally on the path of reform from the eightieth year of the seventeenth century, and Peter the Great published a law as early as 1722, that every case must be decided according to a statute law. A new tendency began only in 1861, when twenty millions of serfs received legal qualifications. These people lived for hundreds of years after their old customs and usages outside the rules of the statute law. Therefore the Government established law-courts for the people, which judge after customs and manners; even magistrates of the crown could use the customary law in cases which were not determined by the statute law. All this, with the influence of the German historical school, which saw in customs and manners a source of law, drew the attention of the learned to the customary law, and now this branch of legal literature is unusually rich in Russia.

Finally, turning to the literature, we see that the reforming activity of Peter the Great evoked a great literary movement, Pososhkov[1] being one of the most eminent economical writers[2]. But afterwards we find no legal literature until the second half of the eighteenth century, when the universities were opened.

[1] Pososhkov's work 'Upon Poverty and Wealth' (*O skudosti i bogatstve*) is edited by M. P. Pogodin, Moscow, 1842.

[2] The time of Peter the Great is very rich in political literature. The reference and analysis of this literature can be found in the work of Miljukov, *Gosudarstvennoe hozjajstro Rossii v pervoj tshetverti XVIII st. i reformy Petra Velikago* ('The Economy of the State in Russia in the First Quarter of the Eighteenth Century, and the Reforms of Peter the Great'), Petersb., 1891, and in the book of Pavlov-Silvanski, *Projekty reform v zapiskah sovremennikov Petra Velikago* ('The Projects of the Reforms in the Writings of Contemporaries of Peter the Great'), Petersb., 1897.

The first teacher of law, Desnitskij, a pupil of the University of Glasgow, brought from England, where he was sent in order to study the law by the Moscow University, a vivid sense of the importance of a knowledge of the obligatory legal rules and their investigation from the historical, economical, and even comparative points of view. He laid the foundation, too, for a more practical direction of legal studies than his fellow teachers, who, under French and German influence, tended to the abstract construction of the natural school of law. But this tendency of legal studies soon disappeared, and the abstract investigation of legal rules, under the influence of France and principally Germany, commenced to prevail more and more. The nineteenth century produced an enormous legal, political, and social literature, but it seems to me a little too theoretical, too alienated from the real conditions of life. This is caused partially by the influence of German literature, which, in spite of its craving after system and in spite of its philosophical depth and solidity, is too abstract and too far from the needs of practice. This theoretical tendency of the Russian juridical literature is strengthened still more by the fact that it is almost exclusively written by professors of the universities, alien to all kinds of business, and not by judges, barristers, solicitors, and so on.

# LECTURE III

## THE BOHEMIAN KINGDOM

I HAVE had the honour to describe to you the development of the sources of law in the Orthodox Slavonic states, and wish now to attract your attention to the Roman Catholic Slavonic ones. But I must, as an introduction, acquaint my esteemed auditory with the peculiarities of each state.

Bohemia appeared first on the historical scene. This country from 795 entered into a close union with Germany, which was almost uninterrupted. A long series of Bohemian kings were at the same time emperors of the Roman empire, so that Prague was for centuries the centre of Western continental Europe. If we keep in mind that, from time immemorial, we find German inhabitants in the cities, who became more and more numerous, we cannot be astonished, therefore, that German influence was felt in Bohemia and Moravia from the beginning. This influence prevailed at the court and among the higher nobility, and evoked an eager reaction, when the celebrated Huss adopted the doctrine of Wicliffe. Ancient reminiscences of the old Slavonic democratic organization, long dormant, awoke with an enormous force in the twentieth year of the fifteenth century and caused the extermination of German elements, which upheld the mediaeval social structure.

The population of the cities in this manner became Bohemian and took an important part in the whole of the Bohemian political life. The proximity of Germany and the evident danger of being absorbed produced a greater cohesion of diverse provinces than in Poland, and even the feeling of the want of a stronger Government. Thus the following peculiarities distinguish Bohemia and Moravia: a great and prolonged German influence, the large part taken by the town inhabitants in political life, a sense of strong authority, more lively than in Poland, and therefore not such loose self-government of provinces; on the other hand the almost extinct power of the Roman Catholic Church from the fifteenth century.

Poland presents herself in a somewhat different aspect. This country was separated from the Germans by the Slavs, living on the shores of the Baltic, who carried on desperate wars with the Germans during centuries, and died out only in the twelfth century. Not only news of these struggles came to Poland, but she also gave refuge to a great many fugitives. Certainly that could not produce sympathy with Germany. The Teutonic knights settled in the thirteenth century on Polish territory on the Baltic, and very often directed their arms against Poland. This explains the want of German influence; feudal law, for instance, is almost unknown in Poland. On the contrary the Roman Catholic Church was a powerful factor of Polish culture; she trained the Polish mind from the beginning to the end; she changed the direction of Polish aggressive tendencies from the West, as it was under Boleslav I, to the East; she also took a large part in the increase of the privileges of the nobility and in the weakening of the kingly power; she

acquainted Polish society with the Canonical and Roman law. As the culture of Western continental Europe is composed of two factors, Roman and German, it is not astonishing that the decrease of the German factor augmented the Roman one. The extent of the country and the sparseness of the population hindered the spread of foreign views and rendered easy the conservation of ancient Slavonic ideas, which produced the parcelling of the state. Thus principalities arose, which became independent in the thirteenth century and accustomed the Poles to very great decentralization. A great many conditions combined to weaken more and more the kingly power. Large colonies of Germans settled, principally in the cities, from the end of the twelfth century, and even endeavoured in the beginning of the fourteenth century to turn Poland into a province of the German empire. This attempt, together with the long duration of the German nationality in the cities, provoked in the Poles a sense of disappointment and even hostility against the inhabitants of the cities, and caused their exclusion from the diets. As the kingly power was very feeble and the citizens took no part in political life, the nobility began to reign without a rival from the fifteenth century and considered themselves as the nation. Thus the enormous influence of Roman Catholic ideas, a want of political rights by the citizens, a very feeble kingly power, a great decentralization with a very broad system of self-government of different provinces, and finally the conviction that the nobility is the whole nation, characterize Poland from the beginning, but Lithuania only from the second half of the sixteenth century.

The Croatian principality and later on a kingdom

began to attract the attention of the neighbouring nations from the eighth century, but its independent life continued only a short time. She was never a well-consolidated, cohesive state, and fell in 1102. Croatia entered, endowed with a large system of self-government, into Hungary; almost the whole of the shores of the Adriatic were subdued by Venice. Indeed great differences in geographical configuration, in influences coming from Hungary or from Italy, in the way of gaining a livelihood, in the customs and manners, even in the blood of the population, existed from times immemorial between Croatia and the shores of the Adriatic. These differences came into greater prominence after the loss of political independence, so that the sources of the Croatian law have quite a different character in Croatia and on the Adriatic. The nobility prevailed in the first country, whilst only the inhabitants of the towns led a semi-independent life in the second.

We can now turn, after this slight glance on the Western Slavonic states, which will occupy us later on, to the sources of the Bohemian law[1]. I divide them

[1] A short, but classical, survey of the evolution of the Bohemian State and Society is given by the eminent Prof. Tchelakovsky: *Povsechné Ceské Dejiny Pravní* ('General History of the Bohemian Law'), 2nd ed., Prague, 1900. The history of the Bohemian constitutional law is written by the learned Prof. Kalousek: *Ceské státní pravo* ('The Bohemian Constitutional Law'), 2nd ed., Prague, 1892; in this work is given the historical basis for the political claims of the Bohemian people. The history of the private law is not yet represented in full, but everybody can find a valuable description of the organization of justice, of the law procedure, and of the private law in Victorin Kornelius of Vsehrd, the celebrated lawyer of the end of the fifteenth and the beginning of the sixteenth centuries (*O právích zeme ceské knihy devatery*, 'Nine Books upon the Laws of the Bohemian Country'). A

into three periods, each one possessing traits described in my first lecture: the first period beginning from the

complete bibliography of the Bohemian history is on the point of appearing: Zibert, *Bibliografie ceske historie*, vol. i, Prague, 1900. A juridical journal with the participation of the professors of the Bohemian juridical faculty has begun to appear from this year under the redaction of Prof. Boh. Rieger with the title, *Sborník ved právních a státních* ('A Collection for Juridical and Political Science'). Finally, we can indicate upon Bohemian history two English books, which are praised by critics: C. Edmund Maurice, *Bohemia from the Earliest Times to the Fall of National Independence in* 1620, London, 1896, and Francis Count Lutzow, *Bohemia, An Historical Sketch*, London, 1896.

The juridical documents of the Bohemian legal history were edited in Prague by the celebrated Bohemian historical investigator Herm. Jirecek in six 'tomi' under the title, *Codex iuris Bohemici* (1867 until now, not yet finished); these 'tomi' are subdivided into 'partes.' The first 'tomus' includes the oldest legal documents until 1306, pnblished 1867. The second—the documents of the fourteenth century (1306–1420); this 'tomus' consists of part (*pars*) I (*Documenta iuris publici saec.* XIV, from 1306–78), 1896; part II (*Ius terrae atque ius curiae regiae saec.* XIV), 1870; part III (*Scripta ad rempublicam administrandam spectantia*), 1889; part IV (*Monumenta iuris municipalis saec.* XIV), 1898. From the third 'tomus' appeared only part II (*Ius terrae saec.* XV, from 1420–1500), 1873, and part III (*Mag. Victorini a Vsehrd, opus bohemicum, 'de iure terrae Bohemiae libri novem'*), 1874. The fourth 'tomus' includes part I, sectio 1 (*Iura et constitutiones regni Bohemiae*), 1882; part III (*Monumenta iuris municipalis*), sectio 1 (*Mag. Briccii a Liczko, Ius municipale Pragense*), 1880, sectio 2 (*Mag. Pauli Christiani a Koldin, Ius municipale Regni Bohemiae una cum compendio eiusdem iuris*), 1876; part V (*Scripta iurisconsultorum saec.* XVI), 1883. From the fifth 'tomus' appeared part II (*Constitutiones regni Bohemiae anno* 1627 *reformatae*), 1888; and part III (*Constitutiones margraviatus Moraviae anno* 1628 *reformatae*), 1890. This description of the contents of this monumental edition shows clearly, that the edition is far from its end, and that the 'tomi' and 'partes' do not appear in their chronological order.

The second very important edition for the legal history of the

tenth century to 1253, the second from 1253–1434, the third from 1434–1627, when a promulgation of a new code, founded upon the German ideas and tending to germanize the Bohemians, indicated a complete rupture with Slavonic ideas.

### First Period.

As we know, the first period is always the time of coalescence of the diverse Slavonic tribes into one state and into one nationality. This process was in Bohemia made easier by the surrounding of the country by mountains, covered by impassable forests; but probably the closeness of Germany hindered the total extermination of the old tribal princes. At all events we see a mighty aristocracy from the beginning and great independence of every province, sometimes forming the territory of one single tribe. At the head of every province stood a governor, who represented the grand-duke and was nominated by him, but who was indicated by the public opinion of the province. This governor was limited only at a later time by some functionaries. Every province had two law-courts; the lords sat in the one and judged suits of greater value; the knights judged in the second the cases of less amount, each case being valued in ready money before. Thus every

Bohemian kingdom is *Archiv Cesky* (Bohemian Archives). Its edition began in 1840 and still continues; we find in the last (xviii) volume (1900) a summary of the contents of the edition. It includes, after the idea of Palacky, its first editor, (1) all kinds of writings, (2) patents of kings and magistrates, bills of Parliaments, (3) private writings, (4) juridical and historical documents, (5) extracts from writings. The second and fourth parts of the contents principally contain legal documents very important and edited in a masterly way.

province presented a self-organized whole, but it hardly ever had an independent prince, as in Poland and Russia in the thirteenth century.

The grand-duke, and from the end of the thirteenth century king, governed his people after old customs and manners with his retinue and aristocracy, some members of which soon received functions after the model of the emperor's court. He convoked also an assembly when any unusual measures were necessary or new rules had to be introduced.

Moravia was conquered by the Bohemians in the eleventh century and governed by at first several, and later one prince, who received the title of margrave from the twelfth century. He was nominated by the Bohemian king, could not make laws or grant lands, but was independent as to home rule.

Society seems to have been differentiated much more than in Russia, even more than in Poland. The lords, ruling over vast lands, probably were descendants of the tribal princes; the knights formed also a separate class; the rest of the people were on one level. German colonies in the cities appear from the beginning and lay little by little the basis of a distinct class of citizens. The lords were soon, from the middle of the twelfth century, permeated by a new mediaeval spirit, tending to a greater and greater limitation of the kingly power. They became completely germanized at the end of the first period.

The customary law regulated all relations. It was, as in other Slavonic countries of the same period, not definite enough on account of enormous changes, produced by the appearance of one highest authority and the conversion of the people to Christianity. It

differed also in diverse provinces, as the old charters show, and as do also the different additions to the statute of 1189, designed for different provinces. The absence of one customary law for the whole of Bohemia was a necessary consequence of the existence of many Slavonic tribes, living independently during centuries. A customary law, common to all Bohemia, appears only with the thirteenth century, when the coalescence of tribes took a great step forward. This customary law is designated from that time also by the word 'of the country,' as a contrast to the customary law of German origin, which was also largely spread.

This uncertainty of the rules of the common law was partially set aside, as in Russia, by the autonomy of the individual, namely by agreements between the people and by agreements between the grand-duke and his nation. The course of life under Western German mediaeval influence, however, deposited some definite rules, which were even preserved in writing to the fourteenth century. At least we can single out in one legal document of the fourteenth century a number of articles, which probably were written even in the first half of the thirteenth century, as is shown by the insufficiency of the juridical definitions and their unusual shortness.

We can see from the statute of 1039 how feeble was the notion of the legislative power. This statute stands midway between the civil and canonical law. The prince Bretislav I, during a lucky war with the Poles took Gnezno, a very important Polish town, where St. Voitech was buried. This Voitech was a Bohemian, and, as bishop of Prague, struggled all his life with the pagan customs of his countrymen. The prince and the bishop

of Prague, the latter having seen this saint in a dream, summoned the Bohemian army to the grave of the saint for it to hear orders intended to exterminate the heathen customs and implant Christian ones. After their promulgation the warriors took an oath of adherence. It is evident from this that it seemed necessary to affect the imagination of the people of that time in order to obtain their sanction.

The most important legal document of this period is the statute of the prince Codrat Otto, passed probably by an assembly of Bohemians and Moravians in 1189. This statute is known only from three confirmations in the thirteenth century for three different provinces. In each of the confirmations almost the whole of this statute is repeated word for word, and the three MSS. differ one from the other only by some additional articles or abbreviations, caused by differences in the customs of the provinces. The reason of this issue is probably the wavering of legal order on account of the intestine wars evoked by the insufficiency of the rules as to the succession to the throne. Codrat's laws contain the legal customs operating in the law-courts, namely, the organization of justice and the law proceedings, criminal and private law. We find nowhere the desire to introduce new legal rules; on the contrary, the thought is evident everywhere to define more sharply the rules of the old customary law and to abolish abuses which had crept in. The insignificant changes were evoked by the wish to limit the arbitrary will of functionaries. This statute is one of the most ancient and valued documents of the Slavonic law[1].

[1] These two legal documents are published in *Cod. iur. Boh.*, t. i, 1867.

Although I do not propose touching upon foreign laws, obligatory in the Slavonic states, nevertheless I must dwell a little upon the evolution of the German law in Bohemia, because it became the law of the whole country from the year 1627. The German colonists penetrated into Bohemia and Moravia from Northern and Southern Germany, and brought with them either the pure German law from Saxony or the law from Bavaria, considerably changed by the influences of the Roman and Canonical law, having appropriated, for instance, the idea of individual property and of the law proceedings of Italian lawyers. Notwithstanding these two groups of German law, this law varied extremely in the first period, because every city, even village, was established after a different model of a city in Saxony, or Bavaria and Swabia. A greater unity was the result of later life and later mutual intercourse[1].

### Second Period.

As we have said, the legal customs became settled and the higher classes permeated by foreign ideas from the thirteenth century, but a great change took place only in the reign of Ottocar II. This eminent king made great conquests, which were the cause of a law-court being established in Bohemia, composed principally of lords, appointed by him for life. As the administration of justice was not yet separated from the Government, the members of this high court had also an importance, as councillors of the State. Legal

[1] Prof. Tchelakovsky has rendered great services to the history of the German law in the Bohemian kingdom by many valuable articles, and by his *Codex iuris municipalis regni Bohemiae*, from 1886.

suits, decided formerly by the assembly of the people, were transmitted to the high court of the country, and even this court was reputed to be a committee of the national assembly. So a legal court appeared with legislative power. Thus a place was created for the formation of legal rules by a continued juridical practice of members, appointed for life. As the knowledge of writing was already spread widely enough, a record-office was established from the beginning, in which the records of everything happening in the court were inscribed and afterwards even contracts, principally on real property, were preserved. In this manner traces remained of juridical practice, which were extremely valuable to the Bohemian lawyers; so the brilliant juridical literature arose, which constitutes the greatest glory of the Bohemian law. This court of records soon got so important, that from the end of the fourteenth century the decisions of the national assembly became law only after being recorded by deputies, from the king and from the members of the assembly.

The second phenomenon of great importance was the solicitude which the king showed as to German colonization. He, although somewhat excited by pan-slavistic tendencies, was probably convinced, that he would be heartily supported only by the German citizens, as the lords considered the king only as the first person among themselves, and the knights, very warlike and brave, took the part of each pretender to the throne whom they favoured. On the contrary, the inhabitants of the cities of foreign blood could find real protection only in a king who would defend them from different attacks by the natives, and with a strong arm keep order, so necessary for trade and industry.

A further change appeared only in 1306, when the kingly dynasty became extinct. The confirming on the throne of the new foreign dynasty, that of Luxemburg, evoked a solicitude among the leading classes, that the State should not be made an instrument of foreign aims, and this led to the appearance of privileges.

The final settlement of the Bohemian kingdom on feudal rules refers to the middle of the fourteenth century, when the emperor Charles IV decided to change the hitherto leading principles of the policy of the Roman emperors. He resolved to cut out for himself and his dynasty from the aggregate of lands, more or less belonging to his predecessors, a kingdom instead of craving after universal empire. As he was by the right of inheritance the king of Bohemia, he endeavoured to make of this country a kingdom, perfectly independent and well organized. Therefore he established the University at Prague, promoted sciences, arts, trade, and principally the Bohemian language in Bohemia, and often called Bohemia in his solemn charters 'the most noble member of his empire.' Bohemia and Moravia in his reign were governed by classes found everywhere at that time in the West, namely by a mighty aristocracy and clergy. The policy of Charles IV had consequences, long lasting. The sense of the Bohemian nationality grew to a considerable degree among the people; pride in their kingdom developed to such an extent, that it considered itself called upon to reform mediaeval society. The most important portions of the Bohemian kingdom were Moravia and, from the fourteenth century, Silesia. They had a very large system of self-government with their own high

law-courts, quite independent of Bohemia, and were united only by feudal bonds.

Charles' son, Wenceslas IV, felt the breath of a more democratic spirit. Therefore he called into his private council burgesses and knights and endeavoured to rule with their counsel. This produced a rising of the lords, who defeated, captured, and obliged him at the end of the fourteenth century to sign a charter, by which he promised to reign with a council composed only of lords. Thus the pre-eminence of lords only by usage became a pre-eminence by law. All this, with an enormous dissoluteness and corruption of the clergy, provoked great discontent, which fermented in the masses from the beginning of the fifteenth century; the storm was approaching; the burning of Huss, the disciple of Wicliffe, at the council of Constance, was only the spark thrown in a cask of powder; the celebrated movement of the Hussites began.

Two factions grew little by little from the anarchy of the wars of the Hussites. One counted among its members almost exclusively knights and only a few lords, and wished to build again the Bohemian state on principles not very different from those before the wars. The second, composed of burgesses, who became after the extermination of the Germans also Bohemians, desired to settle the state on quite new principles not yet known, namely, on a broad system of self-government of provinces, cities, villages, even without a kingly power. The first party, which relied upon Western Europe and looked to her for an example, had defeated the second and so commenced the establishment of order on the principles of Western Europe, which constitutes the third period of the history of Bohemian law.

We can now pass on, after this short historical sketch, to our sources.

The establishment of the high court of the country had an enormous influence on the formation of customary rules, obligatory in the whole of Bohemia. Although the two courts above mentioned in every province still existed until the wars of the Hussites, a greater and greater number of legal suits were transferred from the provincial courts to the high court, and here received their final judgement. This transformation of the customary rules, known only from tradition, into rules inserted in the record-office, gave possibility to the lawyers to collect legal rules and to elaborate them into juridical works.

The Book of the old lord of Rosemberg is the first sample of such a literature. This book certainly appeared in the first half of the fourteenth century, because the person for whom it was destined occupied a very high position between 1312–46. The material which was therein elaborated was derived principally from the thirteenth century. It consists of nineteen chapters, treating almost exclusively of the law procedure and the law of evidence. We have in chapter XI, article 209, a table of contents, of which only a short part is completed and is preserved up to this time. We do not know whether the rest is lost or whether it was ever written. A glance at this document shows that this book is only a transcription into one volume of works quite independent and composed at different times. It is not difficult to single out the various parts; for instance, the first three chapters form one whole concerning the rules of summons to court; chapter VIII is distinguished by unusual shortness, and therefore

must be referred to earlier times; the contents of chapter IX are almost completely known from other chapters. The distinct chapters differ also in style and in bearing exclusively in plaintiff's or defendant's interests. The sources of the Book are the customs and usages established in the provincial law-courts and the high court, and the juridical practice; even the names of the plaintiff or defendant are in some articles preserved, so that we can suppose a great many articles to have been a generalization of real law cases. I believe I find signs of the Italian school of lawyers, occupying themselves with the law procedure, in the grouping of several chapters and even in some legal terms. Thus the Book of the old lord of Rosemberg is a collection of Bohemian legal customs, composed for the lord of Rosemberg in the Bohemian language by a private unknown person from several juridical notes and descriptions of customs, which arose at different times, and containing an exposition of civil and criminal procedure, as well as of the law of evidence in the high court and in the provincial ones[1].

The so-called 'Order of the law of the country' (*Rád práva zemského, Ordo iudicii terrae*) exists in two editions, a Latin and a Bohemian one. The Bohemian edition was composed between 1344–50, because its text mentions the archbishop of Prague, and the archbishopric was only established in 1344, and speaks of ordeal by red-hot iron and by water, which was abolished in 1350. The Latin text was written after 1368, because a new formula of the oath, mentioned therein, was

[1] The best edition of this document, with a valuable preface expounding its sources and its appearance, is made by Brandl, *Kniha Rozmberská*, Prague, 1872.

established in that year, but the composing of the Latin text began soon after 1350, as the author says that the lords had no time to invent new forms of evidence instead of the abolished ordeals. Both of these editions had received some later supplements. This document, as the heading indicates, contains the expounding of the law procedure in the common Bohemian law-courts, in which was applied the Bohemian law of the country. The manner of the composition evidently consisted in a description of law procedure in every group of law infractions, for instance, assassinations, robberies, transgressions against real property and so on. Such a manner of treating the subject caused a great many repetitions, replaced by references, and this shows the author's inability to generalize. The principal, almost exclusive, source of the document is legal custom, as it arose through the legal practice of the high court of the country. The influence of the schools of the Glossators and Commentators is evident in the wish to explain the Bohemian legal customs by examples invented, so-called 'casus,' and by the use of legal terms, 'nota, glossula.' This work stands, probably, in some relation to the legislative action of Charles IV; at least some articles are almost transcribed into his proposal of a code, which was not sanctioned by the national assembly. At all events this work, like the Book of Rosemberg, was of enormous importance to the high court and even to the courts, applying German law. Indeed, it is a very rich depository of information not only about the law procedure and the law of evidence, but also about the criminal and even the private law[1].

[1] The best edition is in *Arch. C.*, t. ii, Prague, 1842, pp. 76–135. In *Cod. iur. Boh.*, t. ii, pars ii, pp. 198–255, the order of the articles, unfortunately, is changed.

A document, known in scientific Bohemian literature as an instruction for the officials at the record-office, arose about the year 1396, and presents a collection of legal rules about the law procedure and the law of evidence in the high and minor courts of the country. We have many Latin MSS., very remarkable by their headings and the number of the articles, and only one Bohemian one. The unknown author evidently generalizes the legal decisions, so that the principal source is the juridical practice; we find indications of old customs only in two paragraphs. Thus the great difference in the extent of this work is a result of its loose character; the rules, taken from practice and not combined by a system or a distinct aim, could be more or less numerous according to the desire and the needs of the owner of the manuscript. At all events this work shows a greater ability for abstraction in its author.

The most brilliant legal document of this period is the *Exposition of the Bohemian Law of the Country*, composed by Lord Andrew of Dube. It is distinguished from the above-named treatises, because it is a work of a person pursuing in its composition a distinct aim and therefore marking it with his individual stamp. It is the first investigation of Bohemian law. This work was written in Bohemian about 1400, and dedicated to Wenceslas IV; the author wished to attract the king's attention to the abuses widely spread throughout the law-courts, and produced, as he presumed, by oblivion of the old customs and usages. The author, after indicating in the introduction the sphere of action of the highest functionaries of the country in the high court, speaks of other Bohemian courts, and then passes on to

a description of the law procedure in the high court of the country. Therein he dwells upon the doings of the persons concerned in the intervals of the sittings of the court, upon the course of the lawsuit in the court itself, and on the execution of the judgements. This threefold grouping was produced by the fact that lords sat in the law-court, but the actions preceding the opening of the court, for example the summons to court, and the execution of the decisions, were carried out before the functionaries alone, sitting in the record-office. In other words, the antithesis of the law-court, in which the social element took a deciding part, and the record-office, in which it was absent, formed the difference between the first and third parts of the law procedure on the one hand, taking place before the record-office, and the second part on the other, taking place before the law-court, although the functionaries were the same in both cases. The author, after this description of the course of every law-suit, speaks of the settlement of a decision and on the conditions of its validity. This singling out of the study of the judgements was evidently produced by the twofold importance of the decisions of the court; they not only resolved definitely a legal suit, but were regarded as settling juridical rules, obligatory in the future. Andrew of Dube draws our attention on this occasion to some parts of the private law, because they grew, probably, by the juridical practice. Finally, he finishes his work with the doctrine of the causes of nullity of several legal acts. The author, after ending his systematic work, continued to make additions to it until his death in 1412; these supplements evidently could have no system. Dube says in his introduction about his

sources, as follows: 'I have written my remembrances from what I have heard from my forefathers and from many old lords, who loved the law of the Bohemian country, and from what I have learned myself, sitting in the court as a high judge for many years.' Thus the law practice, transmitted only by traditions, and the legal decisions, are the sources of his work. So we see in Andrew of Dube an eminent practical lawyer, who laid the foundation of the national system of Bohemian law, and who knew perfectly well how to distinguish the obligatory rules, established by practice, from opinions of lawyers and judges and from decisions, evoked by extraordinary conditions, and therefore unfit to serve as law precedents [1].

This vast juridical literature has, I believe, a great resemblance to the English legal works of the same time. If we glance at the whole of Roman Catholic mediaeval Europe, we see in the South a great literary movement, produced by the studies of the Roman law and its adaptation to the relations of the different countries. Besides, we find in Middle and Northern Europe works containing descriptions of the legal customs and the law procedure of different European nations. But we remark only in England and in Bohemia an eager study of legal precedents and the application of scientific methods, worked out by the glossators and commentators, to home law practice. Glanville and Bracton, for instance, look from the same point of view on Roman and national law as old Bohemian lawyers; both of the countries wished not only to describe the course of a law-suit, but

[1] The two documents, just mentioned, are published in *Cod. iur. Boh.*, t. ii, pars. ii.

also to establish definite rules from legal practice with the aid of a knowledge of the Roman legal theory. The enormous pre-eminence of England over Bohemia was, however, in the schools of law, so developed in England, and unknown in Bohemia.

The legislative action of the king divided itself into two spheres, the first, in which the king acted almost independently, and the second, in which he could promulgate laws only with the consent of the assembly of the country, consisting of the aristocracy, as permanent members, of knights and of the town inhabitants from the year 1287. These two spheres were based on customs of times immemorial, on the idea that princes can regulate some administrative affairs and decide law-suits, but cannot alter the order of living established by their forefathers. Therefore we find these two spheres in each Slavonic state, but they are in particular sharply defined in Bohemia after the establishment of the high court, the members of which, as we know, were also councillors of the state and even representatives of the interests of the country, as opposed to those of the king after the appearance on the throne of a foreign dynasty. The king, as head of the state, could independently dispose of the domains of the crown, could collect and expend the usual duties and taxes, could regulate, as a guard of the Church, the affairs of the clergy, of town inhabitants, who lived on the crown domains, and of the feudal lords and knights. But the king preferred, even in this independent sphere, to deliberate with the people concerned about changes in customary law. The kernel of this difference in the legislative action certainly existed also in the first period, but only after 1311 the

part taken by society in the legislation and administration of the country was better defined on account of the kingly power passing to a foreign dynasty. It was settled by privileges, given separately to Bohemia and Moravia, the last existing up to the present time, that the king cannot use the national army, impose new burdens on the people, and make final decisions about the state and its population without the consent of the assembly of the state. Thus a new sort of law appeared, called privileges, which laid the foundation of the constitutional law of the country, and had the character of a contract between the king and his people; the rights of the people were sometimes increased owing to a change of kings, and always consolidated by an oath of each new one[1].

Finally, we meet in this period with several unsuccessful attempts to publish a code. Ottocar II wished to choose from the laws of the city of Magdeburg and from the laws of other countries the best rules, and invest them with legal force in 1272. Wenceslas II summoned even from Italy an eminent lawyer in 1294 for the code's composition. But this endeavour also was rejected by the lords, not willing, as the annalist says, that the Bohemian law should be infected by the definite rules of the Roman and canonical laws, because they preferred to take advantage of the uncertainty of the legal rules. Traces of these two attempts do not remain; only the kingly law of the minors from 1300, composed by this Italian lawyer and permeated by Roman principles, may preserve some remnants of the presupposed code. The final and most eminent effort

[1] The legal documents on all these matters are collected in *Cod. iur. Boh.*, t. ii, pars i.

to promulgate a code belongs to Charles IV. His plan, the so-called Maiestas Carolina, although rejected by the assembly between the years 1346–50, is known to us, and presents a good exposition of the constitutional, criminal, and private Bohemian law. It is founded on the national legal customs, probably previously collected, which perhaps called forth the above-mentioned 'Order of the law of the country.' The emperor was convinced that the weakening of the kingly power was the principal cause of the loosening of all social bonds, which he describes in his introduction. Therefore the whole of the code is penetrated by tendencies to raise the kingly power, to abolish abuses, to ascribe the right of judging criminals to the king alone, to increase the kingly revenues by greater order and control over the functionaries. Probably the lords did not like these innovations, and this was the real cause of its rejection. Although this code was not sanctioned, it had some influence on the development of the Bohemian law, as a depository of Bohemian legal customs[1].

### Third Period.

Notwithstanding the victory of the monarchical party the kingly power after the wars of the Hussites was much weakened, and the self-government of the provinces and cities almost unlimited. The different provinces considered themselves almost as independent states; their affairs were regulated at meetings, at which functionaries were elected to carry out their

[1] The testimonies on these projects are published pp. 17, 18, *Cod. iur. Boh.*, t. ii, pars ii. The best editions of Maiestas Carolina are in *Cod. iur. Boh.*, t. ii, pars ii, pp. 100–188, and in *Arch. C.*, iii, pp. 68–180.

decisions. The king, his highest dignitaries and those of the country, and the national assembly alone stood over these self-governing bodies.

Great changes happened also in social relations. Although the lords distinguished themselves greatly from the knights even in the first period, and although they governed almost independently the country at the end of the second period, the spirit of exclusiveness among different social classes did not spread in the country, as the mingling together, during the wars of the Hussites, of the most different social strata shows. On the contrary, we find in the third period up to the end of the fifteenth century an eager struggle among the different parts of society, so that we find the aristocracy, knights, citizens, and peasants each with very definite rights and obligations. This desire of each class to acquire as many rights as possible leads also to the definitive establishment of the Bohemian Diet, consisting of three chambers, the aristocracy, knights, and citizens, and to the appearance of a legal code. Only the mutual accord between these three chambers and the king and the insertion of their decision in the record-office by their deputies constituted a law. The Bohemian Diet encroached sometimes on the above-described action of the king, while he in his turn encroached on theirs.

This reorganization of the Bohemian state on a model reminding us of the usual structure of Western states changed only after the ascension to the throne of the dynasty of Habsburg in 1526. This dynasty was permeated, under Spanish influence, by Roman Catholic and autocratical tendencies and therefore aimed at the spread of Roman Catholicism; at the

strengthening of the kingly power and making of Austria, Hungary, and the Bohemian kingdom one political whole. It found support in the aristocracy, of whom a great majority remained Roman Catholic and strove for power by the king's help. These cravings of the dynasty, pursued with an iron perseverance for many years, led to the fall of the provincial assemblies at the end of the sixteenth century, to the preponderance of lords in government and to the establishment of a series of offices at Prague and even at Vienna, which aimed at the centralization of the Bohemian kingdom and even at joining this last with Hungary and Austria. These efforts of the Habsburg to propagate Roman Catholicism with the aid of the aristocracy produced continued struggles with the Hussites and Lutherans, and ended with the catastrophe of the year 1620.

After this short sketch we can now dwell upon the sources of law.

The studies on the customary law had an eminent representative in Victorin Kornelius of Vsehrd. He was a most celebrated juridical writer in this branch of law, not only in his country, but among all the Slavs. He was a town inhabitant and as such an eager defender of the rights of citizens, which the nobility at that time strongly attacked; he sympathized with the peasants and supported the kingly power, as a true ally of the citizens and peasants; being a professor of the University of Prague, he was perfectly well acquainted with Latin literature and the Roman law. The appointment of a commission to compose a Bohemian code probably gave the impulse for his great work, *Nine Books on the Laws of the Bohemian Country*. He, although the

greatest authority on Bohemian law, was not elected, and rumours everywhere spread that the new code would introduce many innovations in favour of the nobility. Therefore Victorin undertook to compose, as he says himself in the introduction, a voluminous work on the Bohemian laws, as they are fixed by the decisions of lords, preserved in the record-office, by the kings and by juridical practice, so that every line of the work could be justified by legal documents, written and existing in his time or by precedent established long ago. The first edition was completed in 1499, dedicated to the lords of Postupitz and sent to some lords, friends of his, for revision. These friends advised Victorin to change some points in his work so as not to excite the indignation of the lords against him, and so the second edition was issued between 1502–8, dedicated to the Bohemian king Ladislaus. Victorin's other scientific intentions, for example to write a book on the Roman law to defend the rights and privileges of citizens, were not realized owing to unfavourable circumstances.

The work itself consists of the preface and nine books. The preface is interesting not only as indicating the sources of the volume, but also as an expression of the thought that Bohemia excels neighbouring countries in the possession of a court open to the people and public. Thus the consciousness of the characteristic traits of Bohemian law procedure is evident. The first book contains the organization of different Bohemian courts with the exception of the high court of the country; the law procedure is also expounded inasmuch as it differed from the law procedure of the high court. The second book dwells upon the organization of the

high court and upon all that took place therein; the law procedure and the law of evidence are explained practically, that is the author adds formulas of complaints, oaths, and so on. The third book speaks of the introductory part of the law procedure, that is of the actions of plaintiff, defendant, and lower functionaries of the court in the interval of the sittings of the court. Thus the organization of all Bohemian courts and the law procedure therein were described in these three books. In the succeeding five books the author interprets the private law and in a slight degree the criminal law of the country; only one part of the law procedure, namely, the execution of the decisions of the court, is discussed in the fourth book, evidently because it took place before the record-office, and not before the law-court itself. The manner of expounding is very practical; he writes out the formula of some juridical act, for instance a contract of real property or a testament, analyses this formula, and infers juridical conclusions as to the essence of some contract, of property, of law transgression. Finally, the ninth book contains the rules as to the nullity of juridical actions of judge, plaintiff, defendant, and witness.

The system of this extensive work is evidently founded on the antithesis between the law-court and the record-office. All which happened in the law-court, or which was in close union with it, forms the contents of the three first books; all which took place in the record-office is contained in the five following ones; the last book was written under the influence of Andrew of Dube, who manifestly affected our Victorin by his system. Knowledge of the Roman law is prominent in the treatment of juridical relations, which

are analysed with great skill and precision. Generally Victorin's work is a true scientific one: the author's relation to juridical practice is quite independent; he wishes not only to describe the customary law, but also to explain a rule, not sufficiently developed in practice, to abolish contradictions, to supply the deficiencies of the customary law, and to resolve disputable questions[1].

Omitting two works, containing only collections of the decisions of the high court of the country, we must mention the last treatise on the customary law, written by the assistant of the judge Mensik of Menstein[2]. It is an exposition of the rules of law procedure as to landmarks, and was composed as a supplement to the Bohemian code, receiving in 1600 a legal sanction.

The struggle between the three higher classes, lords, knights, and citizens, ended in an agreement between the lords and the knights, and this immediately manifested itself in a limitation of the rights of the peasants and citizens. Thus the nobility and principally the chivalry reigned during the last twenty years of the fifteenth century, and even wished to ratify their preponderance by a code. Therefore the nobility changed their politics and began to aim at codification. In this manner the first Bohemian code of 1500 arose, which contained all the law of the country, extracted from the decisions of the high and other courts, and expounding the law procedure established by precedent in the different courts. The work was produced in

[1] *Cod. iur. Boh.*, t. iii, pars iii, with a very short Latin preface. Another edition, under the title *M. Viktorina ze Vsehrd O právích zeme ceské knihy devatery*, appeared in the same year (1874) in Prague with a very learned preface by Dr. Herm. Jirecek.

[2] *Cod. iur. Boh.*, t. iv, pars v, pp. 148–218.

a very short time, and that is the cause of its having no system and of its great deficiencies. Besides, it deprived the citizens of their right to take part in the Diet, which they unquestionably had from the end of the thirteenth century. This stirred up the citizens so that they began to think of a revolution. The nobility, however, yielded, and in 1508 the town inhabitants received again their right to sit in the Diet, and in 1517 other contestable questions were settled between these two classes by the treaty of St. Wenceslas. This treaty was always printed with the code, so that from 1517 the code might be considered as accepted by all the inhabitants of Bohemia.

Ferdinand I occupied himself with the code immediately after his accession to the throne, and presided himself over a commission appointed by the Diet for the code's amelioration. The commission was first to examine articles on the power and rights of the king. This altered code was printed in 1530 before the end of the commission. A new edition was issued with the Diet's consent in 1549 after the great rising of the kingdom in 1547. The crushing of the insurrection had certainly a great influence on the increase of the rights of the crown; besides, the whole was brought to a better system. A new commission for reviewing the code was appointed in 1557 in accordance with the wishes of the social classes, in order to bring the rights of the king and of the social classes to a better equilibrium, and this led to the edition of 1564. The new edition, however, satisfied neither the king nor the classes, and new commissioners were elected from the year 1583. As their efforts were without result, the code was reprinted in 1594. These constant revisions

of the code produced great ameliorations both as to the contents and the system; all new decisions of the high court and all new laws were inserted, and so the deficiencies filled up. These editions of the code could not stop the evolution of the Bohemian law by the decisions of the high court in unforeseen cases, because the private and criminal laws were defined in the code in a very loose manner[1]. The year 1620 brought to all this development an enormous change, but first we must call your attention to the law of the town inhabitants, which had a great importance in the last codification of 1627.

We have characterized the law of the citizens, as of German origin, as of two sorts, the Southern one, imbued with Roman and canonical doctrines, and the Northern one, pure German, finally as diverse in every town, every village, notwithstanding its fundamental similarity. A greater unity arises at least between each of these two groups of law during the second period, on account of a more frequent intercourse between the towns; Prague elaborates its own law on the South-German basis and influences strongly the development of that law in the whole of Bohemia; Brunn and Olmütz have the same influence in Moravia. But this unifying tendency appears with the greatest strength in the third period. The first unificator of the law of the town-inhabitants on a South German basis was Brikcij of Licsk in 1536. His work, very remarkable in many respects, was not sanctioned by the king, who did not wish to fix by a law such

[1] The code of 1500 and its Latin translation of 1527 are printed in *Arch. C.*, t. v. The editions of 1530, 1549, and 1564, appeared in *Cod. iur. Boh.*, t. iv, pars i, sectio 1.

large self-government of the cities[1]. This last was restricted after the revolution in 1547 so that the king no longer opposed it; besides, the Diets themselves turned their attention to the insufficiencies and diversity of the law of the citizens. So the codification of the law of the citizens rested on a foundation of South-German law, and was carried out by Paul Christian Koldin in 1579 with the help of the former plan. Koldin's work was sanctioned by the king and the Diet, but only after 1610, and after a prolonged struggle of the Northern Bohemian cities, who defended eagerly their old law of Magdeburg of pure German origin, was it accepted as an obligatory law by all the inhabitants of the cities. Koldin's work was of enormous importance; it was introduced in Moravia from the eightieth year of the seventeenth century, and retained its legal force until the nineteenth century[2]. Besides, a great many legal rules of this codification entered into the so-called Renewed Code of Ferdinand II, to which we now turn.

The crushing of the insurrection of 1619 soon produced enormous changes in all the relations, which were legalized by the Renewed Code of Ferdinand II of 1627[3]. The high court of the country lost its right to make new legal rules, and so the dominion of the customary law came to an end; its members were appointed by the king without the voice of the council of the state, were dependent only on the king and took their oath to him. The legislative action belonged exclusively to the king, so that the high court must, in case of the want of a law, wait the decision of

[1] *Cod. iur. Boh.*, t. iv, pars iii, sectio 1.
[2] Ibid., sectio 2. [3] Ibid., t. v, pars ii.

the king, who also confirmed all questions of life or honour and could even interfere with the cause of justice. The Diet, to which the clergy were also invited with the right of the first vote, could only give an unconditional consent to the new burdens and examine the king's proposals. The law procedure became secret and written; the rules of it, as of the private and criminal law, were mostly taken from Koldin's work, because it contained the peculiar mixture of Roman, canonical, and German doctrines, proper to Germany at that time, but there were always great alterations, called for by Bohemian ideas. As the king appointed as members of the high court almost exclusively foreigners, imbued by legal science, but ignorant of Bohemian law, and he published laws in accordance with German juridical practice of that time, we cannot speak more of the development of Slavonic law after 1627.

Omitting the independent sphere of the king's legislative action in the third period, because it referred either to laws of foreign origin, or to enactments more of an administrative than a legal character, we must remember the privileges of the people, given by each king on his ascending the throne and confirmed by his oath. Therein were reflected all the changes in the relations between the king and the people, even all deep social questions, which agitated the mind of the nation. So the great tenet of religious toleration, only arrived at in Bohemia after much bloodshed, was corroborated by a privilege and entered into the rights of the people, confirmed by each king at his coronation.

Moravia takes also a large part in the development

of law during this period. Therein appeared one of the most valued documents of the customary law, the so-called Book of Tovatshov. The origin of this book gave it an extraordinary importance. The high court of Moravia was closed during the whole of the period that the wars of the Hussites lasted, and that produced an oblivion of the old legal customs, the sole basis of Moravian social life; these customs by tradition and right were appropriated by new generations of lords, who sat from early youth in the court to learn its practice. When the court was opened, the judges and the litigants did not know the legal rules and the law procedure, and therefore the bishop and lords begged the highest magistrate of Moravia, Ctibor of Tovatshov, an old, very intelligent, and venerable lord, to write his remembrances. This endowed his private work of 224 chapters, following one after the other, without particular division, with a semi-official force. It was written at different times, the bulk (chap. 1–191) probably in 1481, and the supplementary part between 1486–1490. Regarding the contents, the bulk of the work can be divided into two parts; the first (chap. 1–32) describes in chronological order the usual events from one king's death to the final establishment of another in the country. On his arrival we become acquainted with the sphere of action of every functionary, because the first duty of a new king was to appoint the highest functionaries. Thus this first part contains the constitutional law of the country. The second (chap. 33–120) expounds the law procedure, the law of evidence, and the private law. The author dwells firstly upon the preliminary portion of the law procedure, principally upon the rules of summons to

the court; afterwards he passes on to the sessions of the court itself and to all that happened therein. After this exposition of the organization of the high court and of the law procedure Ctibor explains the rules operating in the record-office, as the functionaries after closing the court set off to the place where the records were kept, in order to insert therein the different legal acts; on this occasion he discusses those parts of the private law, the applications of which were usually inscribed in the record-office for corroboration. After the departure of the judges, only a few of them with the higher and minor functionaries assembled to decide those law-suits which remained unfinished, and to assist at taking oaths, but principally for the execution of judgement. Finally, the whole of the procedure in the law-court and the record-offices ends with the exposition of the rules concerning landmarks. Our author, however, does not stop here, but passes on to the principal tenets of private law. The supplement of the book was probably called forth by later remembrances, and contains some very important rules on the relations between the different classes and on the criminal law. The sources of this interesting book are principally the author's remembrances, but also the record-office with its records and the public charters furnished material; finally, the author made use of a more ancient exposition of the customary Moravian law and a document of Tas the bishop of Olmütz. The contents are throughout explained by the addition of real public acts; the knowledge of the Roman law cannot even be supposed [1].

[1] V. Brandl, *Kniha Toracovská*, v Brne, 1868. Mr. Brandl explains in the preface the origin, sources, and the importance of this legal document.

The second Moravian book on customary law was composed by the knight Ctibor of Drnovic, an eminent barrister, between 1523–42, under a great influence of the Book of Tovatshov, and explains all the changes which took place in the course of time in the public and private law of Moravia; it expounds also the law procedure practically, introducing a great many examples of legal acts. The author's aim was the same as that of all the preceding works, namely, to communicate to the functionaries of the courts and litigants the legal rules. The author and even other persons after the conclusion made additions to the book, which therefore does not present a definite whole[1].

The codification of the Moravian law was undertaken in 1535 by bishop, hetman, the highest magistrates of the country, and by deputies from the lords and knights. The first code appeared in the same year and was founded on two kinds of material, on the beforementioned Book of Tovatshov, which was almost transcribed, and on the so-called 'peaces of the country.' These peaces arose under German influence, and were treaties made between privileged classes for preserving peace and order in the country and for mutual aid against its violators. These peaces spread themselves particularly during civil wars and contained at first a few rules, but increased in course of time, so that finally they included all the fundamental rules of private and public law. The second edition of 1545 perfected and augmented the first one by new laws,

[1] V. Brandl, *Kniha Drnovska*, v Brne, 1868. Mr. Brandl expounds in the preface the history of this book, and gives in the introduction a short sketch of Moravian legal history.

while the editions of 1562 and 1604 present only slight differences.

The relations between Bohemia, Moravia, and Silesia, the principal parts of the kingdom, were settled after the wars of the Hussites by privileges, given to Moravia in 1497, to Silesia in 1498, on principles of the largest self-government, which was only slightly diminished under the Habsburgs. The law of Silesia, which was annexed to Bohemia in 1329, is multiform, because there, beside Polish and Bohemian law, German and feudal laws were of great importance. The Silesian law was codified only in the principalities of Opolsko and Ratiborsko in 1562, and of Teshinsko in 1592 on the principles of the Bohemian code of 1549.

Throwing a farewell glance on the literary movement in Bohemia and Moravia, we must first remember the legal literature, describing the law procedure in the courts of both countries, and working out the juridical practice into a system, proper only to the Bohemian kingdom and produced by the peculiarities of Bohemian law. This literature was possible only after the appointment for life of judges in a high court, the decisions of which were obligatory for the whole country. These national lawyers are the glory of the kingdom. Another kind of lawyers were mostly professors of the university, as, for example, Vit Oftalmius from Oskorino, Kocin from Kocineto; they were occupied mostly with the Roman or canonical law or with the law of the town-inhabitants, that is, with those of foreign origin. Political writers we find very seldom; the work of Peter Shelchickij (*Chelcicky*) is very interesting, as acquainting us with the political and social ideals of the so-called Brothers. We receive also very important

testimony on Diets, sessions of the high court, and other political and juridical events from the memoirs concerning the high court of Moravia and letters of Charles the elder of Zerotin[1], and from memoirs, as of William of Slavata[2]. This literature belongs principally to the last ten years of the sixteenth century, and to the first years of the seventeenth century. That was a very stormy time; the struggles arose principally in the Diets; therefore letters and memoirs sometimes threw a keen light on political parties and their aims. All this excitement suddenly stopped after 1620. Much more than half of the inhabitants were obliged to leave the kingdom after the catastrophe; three-quarters of the landed property was confiscated. Ferdinand II wished to justify himself in the eyes of Europe for these terrible prosecutions, and confided this to Goldast, a very learned German lawyer, whose Commentaries on the Bohemian public law appeared in 1627. As Goldast did not hesitate even to falsify public acts in order to prove his case, Paul Stranskij published his *Bohemian State* in 1634; it is a true description of the political relations of the Bohemian kingdom in the sixteenth and seventeenth centuries. Although the literary movement was vivid enough

[1] The works of Charles the elder of Zerotin (*Spisy Karla Starého z Zerotína*) are published by V. Brandl in Brunn between the years 1866–72 in two parts, one including his memoirs on the high court of Moravia (*Zerotínovi zápisové o soudě panském*, 2 vols., 1866), another his Bohemian letters (*Listové psaní jazykem českým*, 3 vols., 1870, 1871, 1872).

[2] The memoirs of William of Slavata on the high court of Bohemia (*Zápisky Viléma Slavaty z let* 1601–1603) are published by Rezek in 1887 in the editions of the Bohemian Scientific Society (*Rozpravy Kr. České Společnosti Náuk*).

in 1627 and the succeeding years until the consequences of these awful events disclosed themselves in their full strength, this literature after 1627 is almost foreign to the Slavonic law, so that Stranskij's book may be called the last cry of despair of a downtrodden nation.

# LECTURE IV

## POLAND

THE Slavonic tribes, which formed the Polish kingdom, were scattered through vast territories without marked frontiers; they were as if lost between forests and swamps, and cut off by other semi-heathen Slavs from nations more cultivated. Therefore they entered on the historical scene only at the end of the tenth century, and the process of the appropriation of the new mediaeval doctrines lasted a long time. The Roman Catholic Church took the largest part in their development, which engraved a distinct stamp on all their future political and social life. The coalescence of different tribes into one state and one nationality under the guidance of the clergy, and the struggles between the old heathen ideas and the new ones, continued until the end of the thirteenth century. The foreign, principally German, colonization was first brought about by the clergy at the end of the twelfth century, but assumed its largest dimensions from the Mongolian invasion about the middle of the thirteenth century. Poland, principally by the influence of the clergy and partly on account of foreign colonization, became from the fourteenth century very like other Roman Catholic countries.

The two centuries, the fourteenth and fifteenth, present

Poland as a mediaeval state with the same tendencies of mind, constitutional and social structure as in Western Europe. But from the beginning of the fourteenth century the rising of the town-inhabitants in order to turn Poland into a province of the German Empire, and their German nationality, which they preserved very carefully, alienated from the citizens the nobility and even the peasants. So the cities were excluded from political life, and formed, as it were, distinct bodies in the Polish polity; they could not therefore counterbalance the nobility or support the kingly power. As even their economical strength was undermined by the great changes of universal trade on account of the maritime discoveries of the fifteenth century, the importance of the towns began to disappear from the second half of the fifteenth century. Meanwhile the Polish mind was educated by the clergy to a sense not favourable to a strong civil authority which could restrain the chivalry, and so the nobility obtained more and more privileges. From the middle of the fifteenth century it considered itself as the nation. The frequent meetings of the nobility in the fifteenth century, and the appearance of the Diet at the end of that century consolidated government by them.

The revival of Latin and Greek studies must have had an enormous influence on the nobility, which became more and more wealthy after the fall of the state of the Teutonic knights in consequence of the opening for trade of the Vistula. This nobility was greatly attracted by the grand pictures of political life of ancient peoples. The Roman king, elected by a nation of landowners and at the same time warriors, fascinated the imagination of the Polish nobility, which decided to re-establish this

ideal. Thus the history of Polish polity from the sixteenth century becomes very valuable to a history of law, because it is almost the only example in the history of mankind, where a very large society was as if hypnotized by fancy for some centuries, notwithstanding the real conditions of life, which urgently required reforms and finally conduced to the fall of the state.

Thus we find in the Polish development of private and public law[1] the same threefold division, which we

[1] The Polish history of law, principally the history of the public law, drew the attention of the native and even foreign investigators from the sixteenth century; but these writers generally looked on the past events from the point of view of their time, and wished to give a large picture of the whole past from the beginning to the day of their writings. Besides, as the political history of Poland was very stormy, the authors could not look upon the events with a necessary calmness and impartiality. This state of things evoked a reaction about the middle of the last century, and from that time we find an uninterrupted series of initial editions of all sorts of documents and very important monographs, but we have not a general sketch of the whole history of law, in which all the dispersed investigators were turned to account. Partially it can be said only of the history of Poland by Prof. Bobrzynski (*Dzieje Polski w zarysie*, Krakow, 2 vols., 1887, 1890), which describes the development of the Polish state and the Polish society. The expositions of the private law, made by Dutkievitch and by Burzynski cannot be recommended, as not scientific enough. The history of the private law, however, could not even be written; as every palatinate lived after its own customs, a scientific description of the development of the private law ought to be based on such investigations, very difficult to make. The multitude of very valuable monographs renders a good bibliography particularly useful. Such a bibliography, collected and brought into order by Dr. Finkel, appears from the year 1891 and is yet far from the end (*Bibliografia historyi polskiej*, 1891–1900). Another help can be found in the 'Quarterly Historical Review,' published from the year 1887 by the Historical

have observed in Russia and Bohemia, and even with the same peculiar traits, namely, the period of a struggle between old Slavonic ideas and imported ones; the period of the reign of ideas, formed by their mingling together, and the period of pre-eminence of new ideas, in Poland and Bohemia of humanism; in Russia of the ideas of Western Europe of the eighteenth and nineteenth centuries. These three periods present themselves in Poland as follows: the first from the tenth century to the end of the thirteenth century, the second from the fourteenth century to the beginning of the sixteenth, and the last from the sixteenth century to the year 1795.

After this short sketch of the periods and the great intellectual movements by which they were produced, we now pass on to our theme.

Society in Lvov (*Kwartalnik historyczny*). The English people have a very valuable English book upon Poland's history, her political and social development, and her literature, written by Prof. Morfill, *The Story of Poland*, New York and London, 1893.

The Polish laws were already edited in the eighteenth century by the friars Pijars (Konarski and foll.) in 8 volumes, Warsaw, 1732–82, under the title, *Volumina legum*. The second edition, without any alterations, appeared in Petersburg, 1859–60; the ninth volume, including the constitutions from 1782–92, was edited in Cracow in 1889 by the Polish Academy of Sciences and Arts. But this publication can be used for scientific purposes only for the laws from the sixteenth century; the older legal documents have not been published in a critical form.

From a great many scientific publications we must draw attention to the 'Old Monuments of the Polish Law' (*Starodawne prawa polskiego pomniki, Vetera iuris Poloni monumenta*), Cracow, from 1856. This edition, not yet finished, includes not only legal documents, but also in the prefaces and introductions valuable scientific investigations on them.

### First Period.

Polish history opens, as the history of every Slavonic state, with the lofty figures of the first founders, forming the heroic epoch of Slavonic history. The Boleslases enlarged greatly the territory, introduced Christianity, organized the Church, governed the country almost arbitrarily, so that the State was considered as their own property and as acquired by their own efforts. Therefore, when the king had many sons, it was subdivided. Notwithstanding their energetic rule, they probably could not crush the ancient tribal princes and their descendants, who formed the basis of a mighty aristocracy. This last class certainly looked with discontent upon the arbitrary government of the kings, and sought only a pretext for strengthening its own influence. Another movement tending in the same direction came from the monasteries, which were animated by the ideas of Pope Gregory VII as to the independence of the clergy of the State. A convenient occasion for changes arose in 1138, when Boleslas III parcelled out his dominions among his four sons, upholding thereby very old, even heathen, traditions. The aristocracy and clergy supported with all their might this division of the state, and so principalities appeared, which became more and more independent during the twelfth century, and grew up into sovereign states at the beginning of the thirteenth century. This revival of heathen disintegration, strongly upheld by the aristocracy and clergy, had an enormous influence on the whole of Polish history in its international, political, and social relations. The civil authority, after 1138 bereft of the title of king and called to the throne usually by elec-

tion, turned almost into a plaything of the clergy and aristocracy, so that all new measures concerning social life were undertaken by assemblies consisting of the aristocracy, assisted always by the higher clergy.

Society, I am convinced, was at first very little disintegrated. The aristocracy existed from time immemorial, but was not much elevated above the people; the clergy were regarded as functionaries of the State and subordinated to the king; their retinue was very numerous, and, probably, shielded by the higher pecuniary fines from offences against it; the people were free and cultivated lands, considered at first as tribal property, but later as that of the king. This social structure changed at the end of the period under the influence of the mediaeval ideas that the State must be only the civil arm of the Church, necessary until the evil begotten by primogenital sin was rooted out, and that the king was a person designated by God to rule over the common people with the help of the clergy and nobility, according to eternal laws of the Creator. Thus the clergy and aristocracy formed two classes, ruling society through the princes of the principalities; beside them, from the middle of the thirteenth century, the knights received considerable privileges for military chivalry service; the town-inhabitants, mostly of German origin, settled after the confirmation to each city of a large system of self-government on a German basis; only the position of the peasants got worse, because the new burdens lay exclusively on them.

The customary rules, mainly regulating the social relations, were not definite enough, on account of the great revolution caused by the absorption of the tribes into one state and their conversion to Christianity.

They differed also greatly for the same reason, and the independent life of several principalities certainly did not lighten the existence of common Polish legal customs. This was partially set aside by the autonomy of the individual, namely, by agreements between the people. Customary law prevailed particularly in private law, while the public law came more under the regulating action of the princes. A greater unification of legal usages appeared only in the second half of the thirteenth century, when 'the law of our country,' 'the customary law of our country,' was sometimes mentioned as in the privilege of the Jews in 1264[1]. This unificatory movement stopped, however, at the boundaries of different principalities because of their independence.

This customary law of the first period is preserved to us in one very important document, probably originating in the territories of the Teutonic knights due to the appropriation in 1249 by the baptized Prussians of the Polish customary law. This probably brought before the Teutonic knights the necessity of acquainting themselves with that law, and therefore they ordered their functionaries to assemble the Polish population, and to settle the legal rules by questioning them on their customs. In such a manner a statute arose in the German language and for German functionaries, whose duty was to judge in countries having a Polish population. It consists of a preface in verse and of an exposition of the organization of justice with the law procedure, the criminal law with its law procedure, the law of inheritance, of ordeals, of the rules on rural relations and the relations between landlords and their

[1] The privilege of the Jews of 1264 is edited by Bandtkie, *Ius polonicum*, Varsaviae, 1831.

tenants. The end of the MS. is lost from the point where it passes on to the relations between the landlords and their free peasants, probably because they did not really exist in the fourteenth century, which is the date of the MS. The system above-mentioned and the explanation show the unusual capacity of the unknown author. The notes on the margins of the document prove its application in courts. Although all I have said is pure supposition—the MS. itself gives no direct indications—it is sustained by a long series of facts scattered through the MS. We have no need to dwell upon the extraordinary importance of expounding such an old description of the Slavonic legal customs[1].

The first Polish kings settled the relations of the population and the clergy probably without taking notice of the will of the ancient tribal assemblies, but the heathen idea of the prince as an administrative organ of the tribe revived, although under quite new circumstances, after 1138. The princes of the twelfth and thirteenth centuries were not supposed to be the organs of the will of the popular assembly, but of the clergy and nobility, as we have said before. This great change appeared for the first time in the decisions of the council of the bishops and nobles at Leczyca in 1180, convoked by Prince Casimir, Boleslas III's son, who was most devoted to the Church. These enactments, forbidding for instance the appropriation of the deceased bishop's property by princes, were sanctioned by the anathema of the clergy and confirmed by the

[1] The last edition of this exceedingly important document is given with a valuable systematic explanation of its legal rules by Mr. Vinaver (Maks Winawer, *Najdawniejsze prawo zwyczajowe Polskie*, 'The Oldest Polish Customary Law,' Warszawa, 1900).

Pope. In this manner the preponderance of the Church over the State was acknowledged by the grand-duke and by the nation. Generally the enactments, promulgated by princes with the assistance of the clergy and higher functionaries elected only from the nobility, referred to the public and criminal law; the private law was changed by them inasmuch as it concerned family relations and the law of inheritance, so closely connected with the interests of the clergy. As the art of writing was not sufficiently spread, these enactments were usually kept in memory only when they coincided with national ideas of justice.

### The Second Period.

The process of uniting principalities began from the coronation of Peremyslas in 1295, when he was crowned king of Poland. The manner in which this union came about was of the greatest importance for the whole future of Poland. While Russia tended to the centralization, and Bohemia, by establishing the high court of the country, aimed at the concentration of all suits in Prague and at a strict control of the highest functionaries over the whole administration of the country, Poland completely preserved the self-government of previous principalities. For a full explanation of these matters we must turn back a little.

The kings of the first period ruled over the country with some concomitants, who soon received functions after the model of the emperor's court. These functionaries were in the twelfth century appointed by princes under the influence, which increased more and more, of magistrates already nominated and forming a senate. Therefore the functionaries began to be

called, not after the name of the prince but after that of the principalities. For instance, the *vayvode* of Boleslas or Casimir was called the *vayvode* of Kalisz or Cracow, that is, of the principality of Kalisz, or Cracow. The princes changed often, but the functionaries remained because they became dignitaries appointed for life, and even moving up the ladder of dignities in an order established by custom. Thus, when two or three principalities were united under one prince, nothing really changed in the home rule, only the prince was obliged to consult the functionaries, clergy, and partially the knights of each principality apart in affairs concerning each of them, and govern by magistrates proper to each. Such a union presented great benefits to single principalities without any disadvantage. So it is not astonishing that their union took place in a short time and without bloodshed, but was very loose. When circumstances required a unity of action the king summoned the functionaries of all countries together with the nobles and higher clergy; some functionaries with a definite sphere of action over the whole kingdom were probably established only by Casimir the Great.

The extinction of the national dynasty in 1370 caused a fear among the leading classes that the state would be absorbed by Hungary, and this led to privileges which were of much greater importance than in Bohemia. It produced among the lords also the wish to accustom the knights to a political life. Indeed, a great many meetings took place in Poland from the year 1370. Along with the lords and the high clergy, the knights began also to take a more and more essential part. As in the end of the fourteenth

and the beginning of the fifteenth centuries, the nation had no time to attach itself to new dynasties; meetings were necessary, because it seemed that the affairs of the state might suffer detriment if all the forces of the nation were not employed therein. In this manner the lords acquainted the knights with political life, so that the idea of the participation of these two classes in deciding questions about declaration of war, about settling new legal rules, and about the increase of the burdens of the state, was definitively established in the course of the fifteenth century.

However, society taking part in political affairs could proceed only in a form elaborated by history, namely in the form of previous principalities, which, when united, were called palatinates (*wojewódstwa*) after the name of the highest magistrate. The king was even obliged in 1454 by a privilege to consult the assemblies of every palatinate on the use of the national army and on the publication of new laws. When he recognized the difficulty of consulting each assembly apart, he summoned to court only their deputies, and so arose the first Polish Diet, probably in 1493. As the king ruled over the country with a senate from time immemorial, the Polish Diet was composed of the king, senate, and deputies, chosen in assemblies of palatinates. But the primordial political unit, the palatinate of the second and third periods, principality of the first period, and probably tribe of heathen time, did not suffer great detriment. In the seventeenth and eighteenth centuries sometimes the Diet itself transferred the definitive resolution of some questions to the assemblies of palatinates, and even the renowned Polish *liberum veto* was only a logical consequence of the tenet, that the Diet is only

an assembly of deputies of omnipotent palatinates. These palatinates can be looked upon as it were quite as sovereign states, which can make a definitive decision only after a unanimous consent.

The changes in the social structure were also unusually important. The aristocracy lost a part of its influence after the union of principalities and the reconstitution of Poland as a kingdom. But in the time of Jagiello and his successor till the middle of the fifteenth century the clergy with the assistance of the aristocracy, owing to the conversion of the Lithuanians to Roman Catholicism and of their aid in the advancement of Polish culture towards the east, were virtually the ruling power. The knights were guarded from transgressions by the higher pecuniary fines, had real property, and were freed from a great many burdens in exchange for their military chivalry service, but did not take any part in political life until 1370. Their independent political action is evident only from the twentieth year of the fifteenth century; it grows very rapidly, and about the middle of the fifteenth century they began to look upon themselves as if they were the whole of the nation. Many circumstances combined to bring about this result: the greater weakening of the kingly power from 1370, the dying out of old families of lords, the common indisposition towards the clergy, the decrease of wealth and importance of cities, but principally the great mutual intercourse of chivalry of diverse palatinates, which led to the establishment of one political programme upheld by the whole of the knights, and to their being filled with a fellow feeling. Indeed, whilst in the first half of the fifteenth century some families had separate

privileges, later the whole of the knights and even lords considered themselves as a unity, joined by equality and brotherhood. In this manner Poland became united, but this union was not of the nation, but only of the nobility of all the palatinates. This prominent part taken by chivalry in social life had a consequence also in polity. The assemblies of palatinates in the beginning of the fifteenth century had an aristocratic trait, but from the middle of the century chivalry replaced the aristocracy. As the poorer knights could not go to the Diets on account of the great expense, this chivalry, in order to secure its interests, passed mandates in the assemblies in which it prevailed obligatory on the deputies, and which greatly impeded the action of the Diets. Finally, in 1466, after the conquest of the mouth of the Vistula and its opening for the export of agricultural products, the nobility became very wealthy. This preponderance of the nobility made itself felt in the enactments of the Diet of 1496, by which the right of migration by the peasants was greatly limited, the citizens were deprived of their right to possess landed property, and the higher dignities in the Church were made eligible for nobility alone.

The position of the town-inhabitants got worse on account of great changes in trade. The continual wars in the Balkan peninsula and the fall of Constantinople destroyed the great road for trade to the east, which had enriched the cities of Poland in the fourteenth century. At the same time the grand maritime discoveries of the fifteenth century gave to universal trade quite another direction. Thus the cities became poorer and therefore weaker in culture, education, and fellow feeling at the very moment when their natural rival,

the nobility, greedily accumulated riches, political influence, and new ideas.

All the events above described placed a peculiar stamp on the legal sources of this period.

The customary law, which was preserved in the first period almost only by tradition, began to take a written form. In the fourteenth century records came into use in all the courts of each palatinate or province, probably, under Bohemian influence. As the courts in every province were of two sorts, 'the court of the country' principally for private wrongs, and 'the court of the castle' for criminal offences, the records were also of two sorts (*libri terrestres* and *libri castrenses*). The contracts and other acts were soon inserted for corroboration into the records of the country. We find in the laws of the fifteenth century great efforts to make these records real depositories of the common law, but this attempt was not successful, probably owing to the circuit of these legal customs being very restricted. The customary law presents itself in these records in the form of decisions of law-suits and in that of decrees, that is, in the settlement of a rule which must be observed in future similar cases. These records are preserved up to the present time, and give us unusually rich material for the history of the Polish legal, political, and economical relations.

The so-called 'landa' were of much greater importance. They are local statutes of different provinces. Their characteristics can be very well seen from *Constitutiones terrae Lanciciensis generales*[1]. They were passed in 1418 and 1419, with the consent of the representative of the king, *Lanciciensis capitaneus*, in

[1] They are published in Bandtkie, *Ius pol.*, Vars., 1831.

an assembly of the province, composed of lords-functionaries (*domini dignitarii*), of lords without definite functions (*domini seniores terrae*), and of the whole community of chivalry. We see in this composition of the assembly that aristocracy still prevailed therein; it was so-called 'conventio baronum,' the national assembly of the epoch of independent principalities, this is my conviction. This epoch left to later times two sorts of assemblies, not yet differentiated and therefore called by the same Slavonic name, *veche*, a national assembly, as a form of the participation of society in the prince's power, and an assembly appointed beforehand for the decision of the most important law-suits. Beside these two councils, assemblies of chivalry and lords, so-called *sejmiki*, appear clearly from the middle of the fifteenth century, in which the lords are completely submerged in the chivalry. In the third period these new assemblies set aside the older councils. Returning to our 'constitutions,' we find that they regulate different legal questions, relying upon ancient customs, juridical practice, and upon an article of the legislation of Casimir the Great, obligatory on the whole kingdom. Thus even the legislative action of the king in the national assembly needed sometimes local confirmation. These local statutes, almost exclusively regulating old customs and usages, form the second very rich depository of the common law. So the records of diverse courts and the local statutes are the principal, almost exclusive, documents of the customary law from the fourteenth century till the fall of the kingdom.

In this manner the customary law of Poland was different in different provinces, because each of them

had its law-courts and its local statutes. As the circuit of the province was not large, these local customs could not evoke such an interest in lawyers as in the Bohemian kingdom, and produce a literature. Some rules of common law, however, appear in the fifteenth century as obligatory all over the kingdom.

Casimir the Great decided to unite the legal rules of his kingdom and at the same time to remove the abuses in practice, to fill up the insufficiencies of the legal customs, and to free the peasants, generally the poor, from unlawful persecution by a legislation. We have, to our regret, no records of his action except his statutes themselves, which are preserved in a much altered form. Therefore we can only make scientific hypotheses, of which that of Hube seems to me the most probable. In his opinion, Casimir the Great proposed to the usual assembly in Wislica for resolving law-suits a plan of a code containing the above-mentioned improvements. This plan included in particular an organization of justice and law procedure, but only a few rules on private and criminal law. As the king was considered the supreme judge, the organization of justice directly belonged to him. The functionaries, clergy, and lords made in their turn propositions, which were also accepted by him, and so in 1347 the Statute of Wislica was passed, in which a keen eye can perceive up to this time two parties, one pervaded with the lofty ideas of the king, and the second often pursuing private interests. This code was obligatory for the whole of the kingdom; but as Great Poland had many special customs, it elaborated its code, containing principally private and criminal law, on the same system, and that was sanctioned in Piotrokow, probably in the same year. As the king

made propositions to the assembly, this local code has also two parts, one systematic, worked out previously, and another, passed at the time of the assembly under kingly influence. These two codes of Wislica and of Piotrokow differed greatly on the following points. The one, which explained principally the organization of justice and law procedure, was obligatory for the whole of the kingdom and tended to regulate and reform legal customs. The other, which hardly contained any of these matters, was obligatory for Great Poland and tended only to establish the existing ones.

The king, after these two essential legislative acts, did not stop, but aimed at their amelioration and completion. It was, probably, very soon remarked, that the law of evidence was quite insufficient, because of being too difficult for the lawyers of that time to formulate rules from. Therefore a series of decided law-cases, partially invented, and partially taken from real law-suits, were published, which Hube calls after the model of Glossators 'casus secundum ordinem iuris.' Finally the king, who up to his death gave judgements in law-suits in the assemblies, settled a great many questions not yet determined, and these decisions were also inserted in the codes as laws. So the legislative action of the great king presents to us four composing parts: (1) Statute of Wislica, (2) Statute of Piotrokow only for Great Poland, (3) 'casus secundum ordinem iuris,' and (4) singular laws, called by Hube 'Constitutiones extravagantes.'

The organization of justice, the settlement of the law procedure on the same tenets throughout the kingdom, and the fixing of the principal doctrines of private and criminal law, led to the possibility

of a greater unity of legal rules in different provinces. This was attained not by legislation, but by the efforts of lawyers to compose from the different parts of Casimir's legislative action one whole. We cannot dwell upon the way this uniformity was accomplished; it is enough to say that we can see in the manuscripts of the fifteenth century two systems by which it came about, and that the abbreviations of the articles, so-called *Summae*, contributed to this union. Thus the customary law of Poland little by little arises out of the legislation of the great king. In a word Casimir's Statutes had for the succeeding generations the value of purified and written customs; therefore we seldom meet references to the statutes, but very often to the customary law [1].

[1] Prof. Helcel, of Cracow, published in 1856 the first volume of *The Old Monuments of the Polish Law*, in which he has described in a masterly way the manuscripts of the Statutes of Casimir, critically analysed the preceding scientific literature upon them, gave his own hypothesis on their appearance, and edited them according to the results of his investigations. Helcel's hypothesis is up to this time accepted by a great many Polish writers. As Prof. Helcel did not explain systematically the rules of the statutes after his plan, Mr. Stadnickij (*Przeglad krytyczny rozporzadzen tak zwanego Statutu wislickiego*, 'Critical Review of Legal Rules of the so-called Statute of Wislica,' Warsaw, 1860) attempted it for him, but the elaboration seemed to be very difficult, viz. the articles broken up after Helcel's plan could not be brought together into a systematic whole. Meanwhile the celebrated Polish scholar, R. Hube, decided to resolve this question definitively, if possible. He first reconstructed the Polish law of the thirteenth century, as a basis and issue of Casimir's codification in *Prawo polskie w wieku XIII* ('The Polish Law in the Thirteenth Century'), Warsaw, 1874. Afterwards he passed on to the legislation itself in *Ustawodawstwo Kazimierza Wielkiego* ('The Legislation of Casimir the Great'), Warsaw, 1881. He did not only expose his hypothesis upon the origin of the statutes, but also brought the rules after his plan into

The legislative movement, produced by Casimir, was concluded by the Statute of Warta of 1423. As Jagiello arbitrarily passed a law on the organization of justice, and the chivalry claimed to be judged by laws and not by the arbitrary will of the lords, the magistrates of the kingdom assembled together at Warta, even without the king's knowledge, in order to analyse and complete the legislation of Casimir. The forthcoming union with Lithuania accelerated greatly the fusion of the different customs of the province; therefore this council could unite the Statutes of Wislica and Piotrokow with a few insignificant alterations, and make important additions to them on all branches of law. These supplementary articles, together with the law passed by Jagiello, were confirmed by the king, and so became obligatory throughout the Polish kingdom [1].

From the end of the fifteenth century we meet with a further development in Polish legislation, in the

a systematic whole, and explained, by citations from charters and records, how the diverse rules were comprehended and applied in life. Finally, he reconstructed, principally according to the records of the courts, the juridical practice of the end of the fourteenth and the beginning of the fifteenth centuries, in order to settle how much of Casimir's legislation entered into the life of the Polish people (*Sady, ich praktyka i stosunki prawne społeczenstwa w Polsce ku schyłkowi XIV w.*, 'The Courts, their Practice, and the Juridical Relations of Society in Poland to the End of the Fourteenth Century, Warsaw, 1886). But, notwithstanding all these labours, the question seems not to be resolved definitely, as the articles of Prof. Piekosinski suggest (*Uwagi nad ustawodastwem wislicko-piotrkowskiem*, 'Observations upon the 'Wislicko-piotrkowske' Legislation, 1891; *Statut wielkopolski krola Kazimierza Wielk. z r.* 1347, 'Statute of Great Poland of the King Casimir the Great from the year 1347,' 1893, Cracow).

[1] *Starodawne prawa polskiego pomniki*, vol. i, pp. 303-28.

enactments of Diets, the true legislative assemblies of Poland. Those of 1496, as we have said, were particularly important on account of a considerable increase in the rights of the nobility and the diminution in the rights of the town-inhabitants. Indeed, the preponderance of the nobility was by this legal act corroborated[1].

The sphere of the independent legislative action of the king was in Poland soon very limited and of no great importance, the kingly power having become too feeble. It concerned mainly the inhabitants of foreign origin, and affairs not submitted to the law of the country.

The extinction of the national dynasty in 1370 called forth a new and very important sort of law, privileges. The fear of absorption by Hungary evoked the first privilege of 1374, by which Louis of Hungary pledged himself not to diminish the territory of Poland and not to appoint foreigners as functionaries, but only natives of the province; then Louis made the nobility liable to obligatory military service without payment only within the limits of the state, and considerably lessened the pecuniary and other burdens of the nobility. These exemptions were partially due to the anxiety of Poles, who were afraid of becoming only a means for the attainment of political aims by Hungary, and partially only confirmations of rights, acknowledged before by custom. The long series of succeeding privileges to Little and Great Poland developed and determined more strictly the tenets proclaimed by the first privilege. They principally dwelt upon the social position of the lords and high clergy; but we meet for the first time in the privilege of Czervinsk in 1422 the claims

[1] Bandtkie, *Ius pol.*, Vars., 1831.

of chivalry [1]. The most valued privilege was the so-called Statutes of Nieszawa, in 1454, sometimes called the Polish Magna Charta of the knights. They were given to each province apart, and contain a most detailed explanation of all the rights of the Polish nobility. The craving of these to become a nation with a full plenitude of rights and to lower all other classes to a serving, even to a servile, position is clearly expressed in these statutes. They confirmed the former liberties of the nobility, concerning the safety of the persons and property of the nobles, their largest system of self-government, and their earlier liberation from the burdens of the state; afterwards they granted the new right to the provincial assemblies of nobility to decide questions about the participation of the national army in campaigns beyond the borders of the state, about the passing of laws, and the increase of burdens. Also the kings were forbidden to pledge the domains of the crown, because their revenue served to defray the expenses of the state, which otherwise would have to be covered by the peasants, and that would have diminished the income of the real property of the nobles. The Statutes of Nieszawa were consolidated, confirmed, and inserted in the enactments of the Diet of 1496 [2]. Thus the constitutional and administrative law of the kingdom was evolved from such privileges, and these laid the

[1] These charters are published in *Ius pol.*, of Bandtkie, Vars., 1831.

[2] The Statutes of Nieszawa are published, with a preface on their origin and importance, by Prof. Bobrzynski: *O ustawodawstwie Nieszawskiem Kazimierza Jagiellonczyka* ('Upon the Legislation of Nieszawa of Casimir IV'), Cracow, 1873. A valuable article upon their history has been published by R. Hube: *Statuta Nieszawskie z r.* 1454, Warsaw, 1875.

foundation for the future 'pacta conventa,' the essence of these privileges being sanctioned by the oath of each king at his coronation.

Having now discussed the Common and Statute law of the kingdom in the second period, I must turn your attention to lands which were either peopled by Poles, but not yet part of Poland, or only just united to her.

The principality of Masovia, a purely Polish country, but completely independent at this time, presents great interest on account of the conservation of the old Polish mode of life.

The customary law occupied the Masovian lawyers much more than it did the Polish ones. The juridical practice, preserved in the records of the courts, was of such importance that the courts referred to the precedents, and even the legislative assembly justified itself when it established a legal rule opposed to even one precedent. Some lawyers were so greatly esteemed that their decisions were preserved as particularly valuable, and were referred to in cases in which there was no established rule, for example the judge of the country of Czersk. Therefore it is not astonishing that we have two descriptions of the legal customs of the fifteenth century, and that the later legislative action has preserved one collection of customs on the organization of justice and the law procedure, which originated probably in the fifteenth century.

The princes of Masovia passed also a great many statutes, preserved from 1377 and later, on all the branches of law.

This Masovian law is of considerable value to the Slavonic law. Foreign influence was strongly felt in

Poland throughout all the relations of life. For instance, the doctrine of brotherhood and equality, which gave an ideal unity to the nobility, was manifestly brought from the West. Meanwhile Masovia was too far from Western Europe, and therefore much longer retained unaltered the Slavonic customs and usages. As in Silesia foreign influence began to operate a century earlier than in Poland, so in Masovia it was only felt a hundred years later.

Just before the fall of the state of the Teutonic knights in 1454, when a considerable part of the Prussian population asked to be annexed to Poland, Casimir IV confirmed all the legal rules of diverse origin, having in view the variety of population.

Finally, political literature appeared in Poland in the fifteenth century. The first impulse was probably given by the great law-suit of Poland against the Teutonic knights, in which the Pope himself acted as judge. The Poles strove to prove that the Christian religion cannot be propagated by the sword, and therefore the very reason for the existence of the Teutonic knights was quite illegal. Therein we find already the first traces of political thought. The great reformatory movement in the council of Constance evoked also religious and political discussions. But the first real political work appeared in the second half of the fifteenth century, and was composed by John Ostrorog. The learned author was educated in Italy and Germany and brought thence the craving for reforms. He wished to strengthen the civil authority, to free the State from the Church, to formulate a legal code and so on. The manifest confusion in all spheres of life, and the efforts of the higher circles to put the State

and society in order, was the cause of the appearance of this literature [1].

### Third Period.

We have briefly indicated the circumstances which placed a minority, consisting of about one-tenth of the population, in dominion over the State, over society, and even over the Church. But the leading circles of those days required some explanation of this extraordinary fact. This demand was satisfied by the classical literature, so eagerly read by the wealthy and cultivated nobility, and so hastily applied to domestic conditions. It learned therefrom, that the sovereign power can belong not only to the king, but also to the nation itself, that the nation must consist of landowners, because husbandry makes a man independent and trustworthy, whilst trade and industry lead to roguery and fraud. The nation alone must possess full private and public rights, and must be wealthy in order to have time for literature and political and social affairs. Manual labour must be left to the classes who possess no rights, the slaves of ancient Greece and Rome; industry and trade—to the burghers, those foreigners of old republics. These tenets, so deeply thought out and eloquently proclaimed by the heathen philosophers, served as an excuse for the social order just being established, and gave it a profound philosophic basis.

These few remarks explain to us the course of future

[1] The causes of the appearance of political literature in Poland are very well explained by Prof. Bobrzynski: *Starodaw. pr. pol. pomniki*, vol. v. The real work of Ostrorog is found and edited by the Warsaw professor Wierzbowski: *Pamietnik Ostroroga*, Warsaw, 1891.

events. We need only add that the Roman Catholic reaction in the West was strongly reflected in Poland; the religious toleration passed away with the reformation and with the sixteenth century, and being a member of the Roman Catholic church was regarded from the seventeenth century as almost necessary to a noble. So the celebrated golden liberty of the nobles arose in the third period. Meanwhile great changes happened in Western Europe. Kingly power became autocratic in the eighteenth century, the law was considered as the will of a legislator, finally in France the town-inhabitants were reputed to be the true nation by some of the most powerful minds. These new tendencies were also reflected in Poland, and called forth in some of the better educated nobles, who were animated by a desire for progress, attempts to alter the old way of political life, to strengthen the kingly power, to raise the lower orders, principally the citizens, in a word, to revolutionize the State and society. They decided even to effect this transformation by the law of May 3, 1793. But this attempt was too late; a few years could not undo the work of centuries, and the State fell.

After this sketch of the leading intellectual movements we must draw your attention to the historical events. The legislative power was definitively settled by the Diet held in Radom, in 1505, as follows: 'Nothing new can be established by us and our successors without the common consent of councillors and deputies of provinces.' The sphere of action of the highest magistrates of State was also determined at this important Diet, so that from this moment we may reckon Polish polity as definitely settled. The extinc-

tion of the dynasty of Jagiello in 1570, which had in course of time become completely naturalized, allowed the introduction of the tenet, that the sovereign power belongs to the nation. From this time the king was elected by the whole of the nobility only for life; they assembled near Warsaw on a plain called Wola. The king was obliged first to accept conditions, so-called 'pacta conventa,' formulated by the senate and nation, and to confirm them by his oath.

Society was divided into two classes, the nobility with full rights, and the lower orders, whose rights became less and less. The condition of the burghers until the last years of the eighteenth century was lamentable in their economical, intellectual, political, and social relations, although they always had legal competency. The peasants were completely bound to the soil and looked upon almost as the ancient slaves.

The customary law developed itself in ways already mentioned, namely, by legal practice and local statutes. It preserved its local traits, because after 1570 the provincial assemblies were of much greater importance; the Diet itself sometimes transmitted the last decision on delicate questions to these assemblies. Besides, the provincial courts operated as before; even the establishment of the high court of Poland in 1578 could not create a customary law common to the kingdom, as was the case in Bohemia; this was owing to the fact that this court was composed of members elected only for one year and re-elected with difficulty. The Diet looked also with great jealousy on this high court, and hindered by all possible means the appearance of new legal rules from juridical practice. Therefore it is not astonishing that practice, differing in different pala-

tinates, did not attract the attention of lawyers, who preferred the Roman law with its science. Notwithstanding all this, society felt the importance of a customary law. As the idea of codification arose and the collection in 1506 of all laws, obligatory in the kingdom, was undertaken, a promise was made to insert therein the customary law of each single province. The customary rules of some palatinates were actually published in this collection and for the others were left blank pages. While the work on one code was going on, the idea was expressed that it must be based on the customary law of the kingdom, and therefore in 1520 an order was sent to the palatins to describe the legal customs of their palatinates. This order was not fulfilled, and therefore the code must have been based on another foundation. In 1532 the commission of codification was also obliged to correct and to formulate the legal customs of all the provinces of the State, which should have been presented to the commission. This idea was not realized and the customary law remained unwritten. Although from that time we hear no more of customary law, it really, on account of the insufficiency of the laws, regulated all conditions of life. The customs, usages, and manners, preserved only by traditions, were unstable and local, but were almost the only force ruling in the kingdom.

Passing on from the Common to the Statute law, we must remember that the necessity for a code was already expressed in the second half of the fifteenth century. Indeed, the relations had changed so enormously that ancient laws were quite insufficient. Besides, the nobility hoped to establish its rule on a firm basis, consequent in all particulars; the kings, on the other hand, intended

increasing imperceptibly their power. These two opposite tendencies, however, promised no good.

The labours on the code began with Laski's Statute of 1506, in which we find, besides the Polish laws and international treatises, German laws and even one scientific work. The preface explains the need of such a publication; copies of laws became such a rarity, that not more than two or three lords could be found who knew the laws of the kingdom, and none who had a full collection of them[1]. Sigismund I, after ascending the throne, was very much occupied with codification. But all his efforts had no success; therefore the Diet of 1532 decided to limit the problem to making legal rules, operative in the courts, that is to say, private and criminal law with the law procedure. A commission of six persons was appointed, which elaborated in the same year a code under the name, 'Correctura statutorum et consuetudinum regni Poloniae.' This code, known under the name of Statute of Tashickij, its principal author, is of the greatest interest. The commission, relying upon all the preceding laws, preserved as much as possible the text of previous ones, indicating the places where changes were made, and gave in the heading of each book detailed information on its sources; very few enactments were new, and these innovations were justified by the commission; sometimes it limited itself to showing points which needed additional laws. The system is also very re-

[1] Laski J., *Commune incliti Polon. regni Priuilegium*, Crac., 1506. This edition of the sixteenth century certainly could not be made critically, but the laws until the sixteenth century were reprinted from it into *Volumina Legum*; therefore the edition of *Vol. Leg.* until the sixteenth century is not trustworthy, as I have said.

markable and to some extent independent. After the introduction on the sources of law, the first book expounds the polity of the State, but principally the organization of justice; the second contains the law procedure; the third—law of persons in family on one hand and in society and State on the other; the fourth book treats of obligations arising from contracts and law transgressions, and the last one dwells upon formulas of the law procedure, but principally upon those of real property. Thus this plan of code was an exposition of the real Polish law and not of the law which should have been introduced into the kingdom; it completely coincided also with the enactment of the Diet on the appointment of the commission, which required that the commission should clear up the confusion in the laws, set aside ambiguities, remove contradictions, and establish the unity of the whole law. Notwithstanding all these merits the code was rejected by the Diet, partly because it had not mentioned the necessity of the presence of the deputies at the making of laws, but principally on account of the intrigues of some of the lords [1].

This failure paralysed the energy of the kings, and from the middle of the sixteenth century we find only private persons, usually under the inspiration of kings, trying their strength at making codes. Jacob Przylusski was the first of these persons, who edited *Statuta ac Priuilegia Regni Poloniae* in 1553. He was a Roman Catholic priest, but afterwards changed his religion and married. It is not astonishing that we find in his code

[1] This very important document of the Polish law is edited with a learned preface by Prof. Bobrzynski in *Starod. pr. pol. pomniki*, vol. iii.

a great many attacks on the clergy, and for that reason his work was rejected by the Diet, and even bought up and destroyed by the clergy. Notwithstanding this, his influence on his followers in this undertaking was very great. Przylusski's code differs considerably from the Statute of Tashickij. The latter consisted of a revision of the Polish doctrines with the help of the legal practice of the kingdom, whilst the first was pervaded by the rules of the Roman and canonical law with the aid of science. Indeed, we find therein whole sections taken from the Roman lawyers, and the system is also that of the Institutes of Justinian. John Herburt, a magistrate of the crown, edited in 1557 a systematic elaboration of the Polish laws; he took very much from his predecessor; changes and omissions are noticeable only in some parts and in some enactments. The author published this same work in alphabetical order in 1563, and in 1570 at the wish of Sigismund II translated it himself into Polish. His systematical collection was not sanctioned by the Diet, but his alphabetical one had an enormous influence in the courts up to the fall of the Polish kingdom. The third very remarkable project was written by John Tanushevskij under the influence of the commission appointed in 1589 by the Diet to make a code. This plan was also not confirmed, but was of great importance for juridical practice. All these plans have as a common trait the influence of the Roman and canonical law, the legal science of that time being very prominent.

The last effort at codification was made by the Diet in 1776, and the work was entrusted to Andrea Zamoyski. But this last project was very unsuccessful. The Diet of 1780 not only rejected it without examina-

tion, but even forbade it being brought forward for discussion at any time whatever. Besides its many weak points the principal cause of such a failure was the author's wish to reform the State and society, and not to collect, unite, and purify the existing obligatory rules. Therefore this work must be looked upon more as a political pamphlet than as a project of a code. The Diet of 1776 required a purely juridical point of view from the author, who, on the contrary, judged all relations from a political one[1].

Thus the Polish law 'of the country' remained uncodified; it was developed by the enactments of Diets, and in some points by *acta conventa*, that is, by the contract of each new king with the nation, which formed the conditions of his ascension to the throne.

We find in the third period beside the statute law, common to the whole of the kingdom, also local codifications, sometimes very skilfully made.

Masovia was united with Poland in 1525 after the extinction of the dynasty of its own princes. The Masovian codification was evoked by the enactments of the privilege of Piotrkow in 1529, allowing to the Masovians the retention of their laws and customs in the courts of the king and the Diet, by their solicitude about their own laws and the fear of the absorption of these laws in the Polish ones, finally, by the example of Poland, where the king and society were occupied with legal projects. The first code, sanctioned in 1532,

[1] This project is edited by W. Dutkiewicz, Warsaw, 1874, under the title: *Zbior praw sadowych przez ex-kanclerza Andrzeja ordynata Zamojskiego Ułozony.* A critical analysis of this project is made by Prof. Bobrzynski in *Bibliotéka warszawska*, 1875, *serya v, Styczen, v. I.*

was composed by the Masovian Diet of 1531 at Warsaw. It was a joining together, loose enough, of the above-mentioned statutes and a collection of customary law. The need of uniting the different laws of the diverse Masovian provinces and the forthcoming union with Poland produced some changes, but they were not essential. Although this work was confirmed by the king, it soon wanted alterations on account of its want of accommodation to the Polish relations. So the second code of 1540 was published, which is only a reform of the former code in order to procure greater rights for the nobility over the peasants. Besides, the second code presents great ameliorations in law procedure, which put an end to the prolonged instability of legal relations, checked litigiousness and bribing, and simplified the processes. This code was confirmed in 1540[1]. The greater intercourse of the Masovians with Poland led necessarily to a greater similitude in the legal ideas, which in course of time appeared in the abolition of some special peculiarities of the Masovian law. This finally in 1576 brought about the reception of the Polish laws by the Masovians except some pre-

[1] This code is edited by Bandtkie in his *Ius pol.* Besides, the Masovian Statutes are published by Helcel in *Starod. pr. pol. pomniki*, vol. i, on the basis of some old manuscripts. We have a monograph of Mr. Dunin expounding the Masovian public and private law (*Dawne mazowieckie prawo*, Warsaw, 1881). The questions about the history of the Masovian common and statute law are definitively resolved by Mr. Winiarz (*O zwodzie zwyczajow prawnych mazowieckich układu Wawrzynka z Prazmow*, 'Upon the Code of the Masovian Juridical Customs as arranged by Laurence of Prazmov,' Cracow, 1895), and, especially, by the eminent Prof. Balzer (*O sprawie sankcyi Statutu Mazowieckiego pierwszego z r.* 1532, 'Upon the matter of the Sanction of the First Masovian Statute of the year 1532,' Cracow, 1900).

served legal rules guarding the interests of the numerous poor nobility. These rules, taken from the above-mentioned codes, were written in 1576 and confirmed by the king in 1577 under the name of *Excepta ducatus Mazouiae* as a third Masovian code. So Masovia was almost completely united from a legal point of view to Poland.

We have said that Casimir IV confirmed all the different legal rules obligatory in the lands annexed to Poland after the fall of the state of the Teutonic knights. This caused a great instability of the laws, which ought to have been removed by the enactment of 1476, which stated that only the law of Chelm, of German origin, would be obligatory for the whole population; at the same time a commission was appointed in order to examine and ameliorate this law. The new lands were considerably germanized; they had a large system of self-government with a separate Diet, in which the town-inhabitants also took a great part. Generally the Prussian cities were rich and civilized, so that the importance of their law was easily explained. But the acquaintance of the Prussian nobility with the enormous privileges of the Polish nobles, and the failures of the numerous commissions for reforming the law of Chelm, produced among the Prussian nobility the wish to be made equal with the Poles, and this was attained by *ius terrestre nobilitatis Prussiae* in 1598. It is evident that this code, which was immediately sanctioned by the king and the Diet, and extended more or less over all the branches of law, was of great importance to Polish law, notwithstanding the local character of the Prussian code.

We left Lithuania at a time when the polonization

of the leading class took a great step forward, and the disintegration of society was almost complete. This tendency of a part of the Lithuanian nobility to a union with Poland, and the continual and energetical efforts of King Sigismund II, finally produced the juncture at the Diet of Lublin in 1569 of Poland and Lithuania into one state. The two parts preserved a complete system of self-government; only the king and the Diet were the same. The constitution in Lithuania changed also considerably from the middle of the sixteenth century; it was aristocratic, as we have said, but from the middle of the sixteenth century the lower nobility with its provincial assemblies, so-called *seimiki*, makes itself felt more and more, although it never received such an influence as in Poland. In a word, Lithuania preserved its aristocratic traits. The union with Poland called forth changes in the law, and so arose the third Lithuanian Statute of 1588. The alterations refer principally to the constitutional law, while the other parts of law and the system remained essentially the same. The first three chapters contain the constitutional law, namely, that concerning the grand-duke, the defence of the state, and the rights of the nobility; the last ten chapters dwell upon the private and criminal law and the law procedure, which is not separated. All the statutes were published in the Russian language and afterwards translated into Polish and even Latin.

Let us now finally view Polish legal literature, which is rich and varied at this period. It can be divided into three sorts, political, juridical, and historical. The first is very interesting.

It can be taken for granted, that the political literary

movement was founded on the ancient philosophy of State and society, principally that of Aristotle, whose *Politics* in the sixteenth century translated into Polish were well known. As I have said, these ancient ideas coincided to a remarkable extent with the conditions elaborated by history. But beside this tendency we find thoughts, which were spread among the reformers of the sixteenth century, that all classes should be treated with equal justice. These two phases of mind animated Andrew Modrzewski the greatest Polish political thinker of the sixteenth century, who wrote not only for Poland, and whose works were translated into many European languages. The great questions which agitated his native land occupied him also. So he raised his powerful voice for the amelioration of the position of the peasants; he expressed very humane and practical ideas on the establishment of a permanent treasury in order to cover the expenses of the State by equal taxation of the whole nation; he proposed that the high court should be composed of members appointed not only from the nobility. Many other important writers lived at the same time, representing other tendencies; for instance, Stanislaus Orzechowski, who even wished to subordinate Poland to the Pope, Warszewicki, who upheld the necessity of the autocratic power of the king, and Gornicki, whose ideal was Venice with its aristocratic senate governing without rivals. This literary movement diminishes in the seventeenth and the first half of the eighteenth centuries, but arises again with great force in the last fifty years of the latter century, when the questions of the increase of kingly power, the raising of the burghers to a full legal competency and amelioration in the position of the

peasants presented themselves. Hugo Kollataj, Staszic, and others were the leading men of those years; we find in their works the echoes of the forerunners of the first French revolution. Thus the common trait of this long series of writers was, that they recommend only the means for the ameliorating of the state and society, but do not describe their structure.

We can now characterize Polish juridical literature. The failure of the attempts to make a code, the establishment of a high court with members elected by provincial assemblies of the nobility only for one year, brought about the necessity of looking upon Roman law and the science of law as the means of removing contradictions in the Polish laws and of supplying their insufficiencies. In the works of Drezner, Zalaszowski, Ostrowski, Paul Orzechowski, and Zawadeki, on Polish private and criminal law, organization of justice and the law procedure, we seldom find an explanation of legal rules, as they were comprehended by judges and applied in juridical practice, but only a description of rules taken from laws, and their co-ordination with the help of the legal science of that time. Ostrowski is the most interesting among these writers, because he embraced the whole law applied in the courts, and drew some attention to practice[1].

[1] We have a great many works upon Polish political literature. The most widely known are: K. Hoffman, *Historya reform politycznych w dawnej Polsce* ('The History of the Political Reforms in Old Poland'), Poznan, 1869, and St. Tarnowski, *Pisarze polityczni XVI w.* ('The Political Writers of the Sixteenth Century'), Cracow, 1895. I find all the works upon Polish political literature, however, insufficient; the authors look upon the conditions of the political existence of Poland in the sixteenth or seventeenth centuries from the point of view of to-day.

The historical studies on the Polish state and society begin with the work of Kromer, Bishop of Warmia, under the name of 'Poland, or on the position, nations, usages, and state of the Polish kingdom.' This work presents only a description of the state in Kromer's time, but, as the present can often only be explained by the past, it has also some historical indications. Kromer, being the first writer in this branch of knowledge, had great influence on Chwalkowski and Hartknoch, both of whom expounded the Polish constitutional law with historical observations, sometimes valuable. But the most solid authors are Lengnich and Skrzetuski. The former edited a whole history of Polish polity in three periods of dynasties, the dynasties of Piast, Jagiello, and the elected kings. The first period is unscientific, the second is much better, and the third, principally from his memory, is of great value. The second edition of Lengnich's *Ius publicum Regni Poloni* appeared in 1765–6, but great changes took place after these years. Therefore Skrzetuski undertook to describe these alterations in the 'Political law of the Polish nation.' He is less critical than Lengnich, but understands better the Polish development, on which Lengnich looked from the standpoint of his own age, and is animated by the reformatory spirit of the epoch. Indeed, he pays more attention to the citizens, peasants, trade, industry, and national education, and everywhere tries to find means for ameliorating all these diverse national forces.

# LECTURE V

## CROATIA

WE have very little to say about the independent existence of the Croatian principality[1], which became a kingdom by the will of Pope Gregory VII, who endeavoured to weaken the power of the emperor

[1] The southern Slavonic Academy, founded in 1873, is the centre of the whole scientific life in Croatia and Dalmatia. The late President of the Academy, Mr. Racki, made the most important inquiries upon all the relations of the Croatian principality, but had not time enough to collect them into one great picture. The editions of this Academy, referring to the history of law, are twofold: (1) *Monumenta spectantia historiam Slauorum meridionalium* (29 volumes), including old charters, relations of every kind with Venice, very interesting legal documents of Ragusa and so on, and (2) *Monumenta historico-iuridica Slauorum meridionalium*. The last edition includes: vol. i, *Statuta et leges ciuitatis Curzulae*, 1877; vol. ii, *Statuta et leges ciuitatis Spalati*, 1878; vol. iii, *Statuta et leges ciuitatis Buduae, ciuitatis Scardonae et ciuitatis et insulae Lesinae*, 1882–3; vol. iv, *Statuta lingua croatica conscripta*, 1890; vol. v, *Urbaria lingua croatica conscripta*, sectio 1, 1894; vol. vi, *Acta croatica*, t. i (1100–1499), 1898; vol. vii, *Statuta confraternitatum et corporationum Ragusinarum*, sectio 1, 1899. Besides, the publications of the Academy (*Rad*) contain scientific articles, and the so-called Antiquary (*Starine*) consists also of scientific articles and editions of all sorts of documents. The character itself of the country, of its inhabitants and of its history, very well explains the difficulty, probably even the impossibility, of writing a history of law in Croatia and Dalmatia.

by the creation of new kingdoms with some dependence on him. This state, after the extinction of its native dynasty, chose a Hungarian prince, and so became part of Hungary in 1102. No laws are left from these ancient times; we have only some charters from which we can surmise the constitution of this state.

The great difference between Croatia and the shores of the Adriatic has already been mentioned by us, and it put quite another aspect on the political and social relations in the two countries, notwithstanding the identity of the Slavonic populations in both of them. Therefore we shall treat apart the sources of these countries and begin with communes, situated on the Adriatic, because they preserved more ancient and original legal documents, which are also better known.

One of the most important Slavonic codes is the so-called Law of Vinodol (Zakon Vinodolski), a little commune which was composed of some self-governing cities and subject to a princely family of Frankopan, a vassal of the Hungarian king. The code was written in 1288 in the Croatian language; its great importance can be concluded from the preface speaking of its origin. The people of Vinodol, it says, remarked that mistakes happen sometimes as to the ancient and well-tried laws; and therefore they wished to preserve in entirety the ancient good laws of their forefathers. For this reason the inhabitants, clergymen and laymen, assembled before their prince and decided to choose from each city some persons distinguished not by age but by the knowledge of their ancient legal customs, in order to put into writing all the good, old, and proved laws of Vinodol, which they remember or of which they have heard from their fathers and forefathers, in order

to abolish all error. Afterwards the elected deputies are nominated, and it is said as follows: 'All these here indicated, after having gathered together in one place by the wish of the community and by an unanimous authorization and by order of the assembly of the whole community of Vinodol, settled that which is written below or that which they heard from their elders.' The deputies of the cities added at the end of the code the enunciation, that the above-written laws are really ancient and tried ones, under which the deputies themselves and their ancestors lived. The community ordered that in memory of this event a copy should be made of these laws for each city. Thus we have without doubt in this code a very old collection of the Slavonic legal customs. The contents are, we regret to say, very limited; the duties of the population in relation to the Church and prince form almost the sole contents, while the private law is hardly mentioned; only a supplement of a later date speaks of landed property. We find in this code a system, although not very consequent, namely, the group of laws on the Church, on criminal law with the law procedure and the laws on the law procedure. Thus it was an instruction for priests, judges, and administrators[1].

The Statute of the commune of Trsat is only a continuation of the laws of Vinodol. This commune belonged to Vinodol and the family of Frankopan, and its deputies were among the authors of the laws of

[1] This important statute is very well translated into French by Jules Preux: *La loi du Vinodol traduite et annotée par J. P.*, Paris, 1897. An excellent edition, with explanations and a Russian translation, by the celebrated Prof. Jagitch, appeared in Petersb., 1880, *Zakon Vinodolski*.

Vinodol. One charter of Trsat of 1423 even cited the laws of Vinodol as still having legal force. Notwithstanding this, about 1563 Trsat became subject to the emperor and therefore a need was felt of settling the relations between the emperor's official and the population. The discordance between the population and the magistrate of the emperor in the first half of the seventeenth century was the immediate cause of the settlement of 1640; it was based on old customs, usages, and laws, and passed with the consent of the people, so that it also presents a document of the customary law.

The second very important collection of Croatian customary law is the Statute of Politza, a little republic in Dalmatia near Spalato. In 1480 it exchanged the supremacy of Turkey for that of Venice, and this probably caused the necessity of examining, in the assembly of the whole community, old laws and customs preserved in charters, and to complete them in 1485 by new enactments. This was the last systematic revision of old customs; the code was afterwards constantly augmented by new laws which were inserted, and we even find manuscripts of the seventeenth century, in which the transcribers wished to bring the new laws into the same order as the old ones. At all events the Statute of 1485 was the most important, and from its contents we know of another Statute of 1440, which mentions a still older collection of customs. So that we can surmise that the whole statute consists of three parts, the original of unknown date and those of 1440 and 1485. The sources of the statute are almost exclusively old customs and usages, sometimes juridical practice, very seldom foreign laws, of Justinian and of Byzantium. We can even single out the oldest code;

it is preserved almost untouched on account of the great esteem in which old customs were held by the Croatians; it contained fundamental laws on the structure of the community, the organization of justice and the law procedure, and finally the criminal law. The groups of laws on Church and clergy, on landed property, criminal law, private law, and the law procedure were added probably in 1485. This codification does not set aside all the customs, because all events cannot be foreseen and all rules find their place in the statute, as the code itself says. Up to the eighteenth century the code was continually increased by new enactments, only copied in after the systematic code, as I said before; and is held in the greatest esteem by the population up to the present time. It is therefore not astonishing that there are two editions, an older one mostly resembling the original, and a new one completed in 1862, with many additions, modernized and with a greater tendency to systematization. That is one of the most venerable monuments of Slavonic legal antiquity, because it is made by a people who were hemmed in by mountains, far from foreign influence, very conservative, and who had a large system of self-government for centuries; finally, it contains many laws on private relations which are rare in Slavonic collections of customary law.

The so-called Statute of the island of Krk is a collection of laws, but not a code. The legal history of this island can be divided into two parts; Krk, with the above-mentioned commune Vinodol, had its own princely family of Frankopan, who ruled until 1480, when the island was subdued by the Venetians. Therefore the laws from 1362–1480 bear a Slavonic stamp, while from 1480 the Venetian influence prevailed more and more.

These laws, as usual, contain punishments for transgressions and law procedure; those, made in 1388 by a council of persons knowing the old customs and usages, are the kernel of the statute.

The communes of Kastav and Veprinac are situated near Vinodol and Fiume, and had statutes not indeed old but very interesting. That of Kastav was written between the years 1471–93, after the annexation of this commune to Austria, but upon customs, usages, and laws of much older time. This statute was continued and new laws were added, as usual. The statute itself contains the settlement of various duties, in kind and in money, to the functionaries of the empire and of the commune, different legal rules of criminal law and law procedure; the last two are also treated from the point of view of functionaries, as to what fines were to be levied for different transgressions and what sum to be paid for juridical acts. The statute and its supplements are interesting on account of many indications of the self-government of the commune. It had elected judges, its own council, and twenty-four deputies from the people; these functionaries of the commune being clearly separated from those of the emperor. The legal acts are, usually, passed after the mutual agreement of these two kinds of magistrates.

The Statute of Veprinac of 1507 is of great importance as indicating how the transition of the customary law from traditions into a written form was effected. The judges, other functionaries of the commune, and old men who remembered a hundred, ninety, eighty, and seventy years, gathered together and deliberated on the well-being of the community, and said that no scandals may happen among the people

from this moment and for the future; they ordered their chancellor to write the old customs, which were always to be preserved in the honoured castle of Veprinac, so that their customs should be kept therein for the future, and ever be found in writing. These elders examined also their ancient written laws which were passed under different authority and transferred them all to the younger generation. Thus it is the oldest form of law: the fathers transmit to their sons the testimony of how their ancestors lived [1].

We feel the breath of a grey antiquity of almost heathen times from these monuments, all written in the Croatian language. They give us data for surmising the political and social organization of Slavs before their conversion to Christianity. The prince with his functionaries chosen by the tribe from a princely family stood on the one hand; the community with its magistrates, chosen from tribal nobility, and its representatives, experienced through age on the other. The relations between these two powers must be firstly regulated, and these legal rules, of course, make the contents of the oldest laws of Slavs, whether they live on the shores of the Adriatic or in the cold regions of Northern Russia. This old order of life changed under the influence of Venice, which was even reflected in the language of the legal documents, to which we now pass on; they are written either in Latin or Italian.

From the tenth century Venice was attached to these Slavonic communes of the Adriatic; these localities being not, as now, arid and woodless, but covered with

[1] All these statutes are edited in *Statuta lingua croatica conscripta, u Zagrebu*, 1890.

magnificent forests, indispensable for the Venetian fleets. Venice had no reason to exterminate their self-government; she only formed it after her own model. So the native prince, chosen or hereditary, was replaced by 'providuri' or 'providaduri,' nominated for some years by the Venetian doge from the Venetian nobles; so the nobles of the commune formed the large and minor councils, but sometimes also the whole population were gathered together by the ringing of a bell, as was usual from time immemorial. Venice did not forcibly change Slavonic customs and usages; on the contrary, she collected them in order to alter them little by little in a direction useful to her, with an iron perseverance. At the same time, life became much altered; the Croatians, being at first cultivators of the soil, as we see from their legal documents, became traders and seamen, and this hurried their italianization. Now, only husbandmen and the lower orders are perfectly well conscious of their Slavonic origin, while the upper classes in the cities on the Adriatic are sometimes even hostile to Slavonic culture.

I divide the legal documents of this period into two parts. A model of the first part is a collection of the legal customs of the environs of the city of Zara, composed by the order of the Venetian Government in 1551 and completed in 1553. This document contains family relations, the law of real and personal property, regulates the relations between the landowners and the peasants, and finally touches the law of evidence. The supplement of 1553 settles the fines for illegal use of foreign real property. Thus this collection dwells only upon private law and economical relations. The constitutional and criminal laws are not even mentioned.

This was due to the wish of Venice, that the population might use her criminal law; the commonwealth understood that each determination of constitutional law would limit her functionaries [1].

The statutes of cities on the Adriatic are preserved up to the present time, and some of them were edited by the South Slavonic Academy of Arts and Sciences. All these statutes have the same traits. Some laws and written customs existed from very old time; codification arose in the thirteenth or fourteenth centuries, and was brought about by the change of supremacy or princely dynasty; new laws were inserted into the code, but this was inconvenient, and produced a new sort of code, so called *libri reformationum* (books of reformatory laws); sometimes new editions of systematic code were published by eminent lawyers, who made explicatory notes. The statutes are usually complete; they contain the organization of the city and of its justice, private and criminal law, law procedure, sometimes even maritime and commercial law. Not many Slavonic legal rules, however, found place therein; the influence of Venice transformed the political and social structure of communes, and Roman law altered the private and criminal law and the law procedure. There are Slavonic ideas even in Ragusa, among Slavs the well-known Dubrovnik, which took such an eminent part in the Southern Slavonic literature, but almost confined to private law, and principally to family relations [2].

[1] *Rad jugoslavenske Akademije znanosti i umjetnosti*, vol. i, p. 229 and foll.

[2] We have an article of Prof. Bogisic upon the Statute of Ragusa: *Le statut de Raguse, codification inédite du XIII^e siècle*,

Quite another aspect is presented by that part of the Croatian kingdom which entered into a close union with Hungary. It was more like one state with the enormous prevalence of the nobility, whilst the cities on the Adriatic seemed to be so many little republics, which made treaties one with the other, and even waged wars, notwithstanding the supremacy of Venice. The legal history of the Hungarian part of the Croatian kingdom can be divided into two periods as Hungarian influence grew.

Croatia from 1102 to 1527 made her laws in her own national assemblies (*generales congregationes . . . regni Slavoniae*) under her highest magistrate, called 'ban,' who summoned the nobility and promulgated the laws even without the sanction of the king. Hungary influenced Croatian affairs by sending deputies (*oratores*) of the king to these parliaments, and by the presence of the Croatian deputies at the Hungarian councils. This usually happened at coronations, at the conclusion of alliances with a foreign state, and when common means of defence against enemies were decided on. The Croatian provinces were governed by a magistrate, called *zoupan*, chosen from the thirteenth century by the nobility for one year; each province had also its own assembly of nobility. Some laws remain from that period. In 1273 the nobility asked the ban to order that judges should be guided by written instruction, made by the nobility and confirmed by the ban. So a legal document arose, consisting of two parts, on criminal and private law and law procedure, and on constitutional law, that is, on the privileges of the

*par V. Bogisic*, Paris, 1894. See on the family relations in Ragusa the article of Prof. Bogisic in *Rad*, vol. v, p. 129 and foll.

nobility. In 1278 the privileges of the nobility of the province of Agram were made by a very numerous assembly of nobles, and sanctioned by the king. From the fifteenth century we have some criminal laws, and from 1492 the confirmation of rights and privileges of the whole Croatian kingdom, which are of great value. This confirmation, like all previous laws, looks upon the whole population from the point of view of the nobles, and is even called 'articles of the nobles of the kingdom of Slavonia.' Croatia presented almost a commonwealth of nobles, governed by the aristocracy and the high clergy, but partially by the whole of the nobility.

From this period we have also not a large collection of the laws of the city of Agram. It consists of three statutes of different times between 1242 and 1429. The first statute is the most important; it contains the organization of the commune, criminal law, and the law procedure; it was passed in accordance with the wishes of the citizens and confirmed by the king, and mentioned only the ancient customs and old laws and privileges as its sources. The two later statutes speak of the boundaries of the commune, of commercial relations, and of different burdens. Italian influence cannot be perceived.

In the period from 1527–1848, and principally in the eighteenth century, Hungary and Croatia became more and more closely united, which was the cause of the insurrection of 1848. The new dynasty of Habsburg formed a union with the Bohemian kingdom; the continual wars with Turkey produced a greater cohesion, and the formation of the so-called military frontier, peopled by a sort of Cossacks. The Croatian Diet operated independently as before, but on account

of the fear which the Turks inspired, two or three deputies were constantly sent to the Hungarian Diet; from 1568 the Croatian Diets were only summoned after the king had been informed as to what matters were to be treated therein. The laws made by the Diet were also usually sent to the king for his sanction. The Croatian Diet consisted, as in ancient times, of the higher clergy, of the aristocracy and magistrates, and of the nobility; it was not only a legislative assembly, but all the highest administrative action of the kingdom and the highest juridical power were concentrated therein. Therefore everything concerning the action of the Croatian Diet is of the greatest value, and from 1557 up to the present time is carefully preserved in the kingly archives of Agram, the capital town of the Croatian kingdom. These documents of the Croatian Diets can be divided into two groups:—

1. into the records of Diets, containing the enactments of a Diet (*articuli*), the petitions of the social classes to the king (*repraesentationes*), and the mandates of the deputies to the Hungarian Diet or to the king;

2. into the *acta* of Diets, containing the decisions of the bans or kings as to the summoning of Diets, kingly sanctions of the Diet's enactments, the labours of different commissions, correspondence with the military council in Vienna and with the social classes of the neighbouring countries, for instance Austria and Bohemia, finally, petitions of different corporations, cities, and persons to the Diet. Very few of these rich materials are published and almost none studied; only the relations of the Croatian kingdom to Hungary have attracted the attention of students and have been completely investigated. Private persons often made reports from the official documents with different practical objects, legal and administrative;

a great number of these reports are also preserved in the archives of Agram, but are not yet published[1].

Here our task ends, and we can now make some general remarks on the sources of the Slavonic law.

Of the two forms of law, customary and statute, the first prevails throughout all Slavonic history. Even in Russia, where the statute law is considered from the eighteenth century as almost the only form of law, and in the nineteenth century, when the whole law is codified, the great mass of the population, perhaps three-quarters, live according to their old customs and usages preserved only by tradition. The Slavonic law is, in this respect, nearer to the English and American law than to the law of Continental Europe, where the customary law is almost entirely replaced by codes, and does not operate even in common intercourse. Therefore the Slavonic law can furnish valuable data for the determination of the great questions on the origin of law from indefinite customs and usages and on the relation between common law and statute law in the historical development of mankind.

The juridical and political literature has reflected up to the present time the great intellectual movements of Europe, principally Western. We have found only in the Bohemian kingdom a quite independent juridical literature, which elaborated Bohemian and Moravian juridical practice according to the scientific methods used by the glossators and commentators. That peculiarity of the Bohemian kingdom is due to the establishment of a

[1] V. Bogisic, *Pisani zakoni na slovenskom jugu* ('Statute law in the Slavonic South'), *u Zagrebu*, 1872, pp. 131–71. This work of the renowned scholar contains many valuable data for the history of the South Slavonic sources of law.

high court in the second half of the thirteenth century, consisting of members nominated for life.

The Slavonic law is the law of an agricultural people. The citizens in the Roman Catholic countries were foreigners, and lived according to their own legal customs of German origin, whilst on the Adriatic the citizens employed Roman law. In the Orthodox countries the people, occupied with trade and industry, are not yet evolved into a class independent and conscious of its own interests. Therefore real property attracted principally the attention of the legislative power, which reformed it in the Slavonic East and West from two quite different points of view. The history of real property in the Orthodox countries can be understood only by the relation of the servile classes to the State. On the contrary, the law of real property in the Slavonic West is explained only from the point of view of the social classes and their mutual relations. A difference of a similar character is felt in the constitutional law. The organization of the highest authority and of its functionaries is of the highest importance in the East, whilst social structure only gives us the necessary data for comprehending the polity in the Slavonic West.

The legal rules of Slavonic law are more independent of Roman and canonical law than was the case in Continental Europe, and this notwithstanding the enormous influence of Western and Eastern ideas on the Slavs. The legal history of Western Europe, after excluding England and Scandinavia, consists almost entirely of a history of the absorption of the different national laws by the Roman law; the influence of Roman ideas was also strongly felt in the history of the constitutional law in Europe. The Slavs on the contrary, partly on account of their inferior

culture, were not so well acquainted with the Roman law and its science, and therefore elaborated their legal rules themselves. We have many times said that the intellectual influence of foreign ideas was enormous on the Slavs, but this influence was confined to the ideas alone, and not to the legal rules themselves, as in Western Europe. The Slavonic law is in respect of its greater independence more akin to the English law than to the laws of Continental Western Europe.

The juridical element was in the Slavonic world not completely differentiated from the religious, moral, and political ones. We remark in Russia even at the present time a great prominence of religious ideas; these ideas were also strongly felt in the Bohemian and Polish kingdoms, as we have said. This fact points to an earlier period of development of legal order than in the West. The religious, moral, political, social, and economical rules have had no time to differentiate themselves completely.

Therefore it is not astonishing that the sources of Slavonic law are not so well developed as those of the leading nations of Western Europe. England elaborated her law quite independently by an inductive method; therefore precedent takes such a great place in her legal history, and the study of cases is a method of studying law peculiar to the English. The powerful mind of the English people, much earlier than any other people of Europe, understood that to put order into the state and society is to grasp the essence of the living relations between the people and to find convenient legal rules for them. As social life does not proceed in logical order, the legal rules cannot be brought into a complete unity according to some logical system. Therefore the English law is, I believe,

notwithstanding its casuistry and some imperfections in the legal language, the most interesting and most important for a student of law.

The French law presents quite another aspect. It was educated from its earliest youth by the Roman lawyers with their strong logical vigour. The natural school of law and the traditions of the great French revolution increased much more the love for thorough abstractions. Therefore we find in this law a craving for logical order of legal rules which would with an iron consequence produce all the necessary inferences. At the same time we meet with a passionate love for progress, and this can be produced only by law. Thus the codification, consisting of a few, but most general, leading legal rules, is the ideal of the French nation, and this leads to the commentary method of the different codes which characterizes French legal study.

Finally, Germany was accustomed by her great philosophers to see in legal order only the embodiment of the organic order of the universe. Therefore system is the peculiar method of legal investigations in Germany. This makes the German law perfect in theory, but something too far from the real relations of social life.

The Slavonic law has not such a well-expressed individuality; it is much less developed, and shows some signs of youth, but it also endeavours to approach the leading European nations, in order to contribute its part to the great question of the unification of the whole of mankind on the great doctrine of eternal justice.

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